

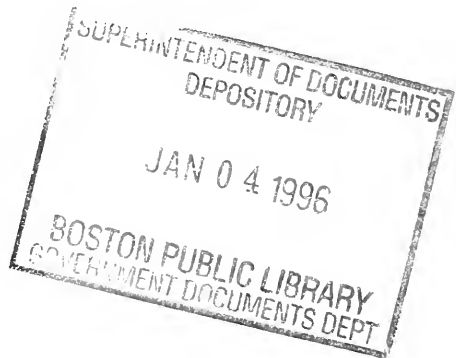
# BUREAU OF INDIAN AFFAIRS REORGANIZATION ACT OF 1995

Y 4. IN 2/11: S. HRG. 104-244

Bureau of Indian Affairs Reorganiza...

## HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS FIRST SESSION ON **S. 814** TO PROVIDE FOR THE REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS

JUNE 28, 1995  
WASHINGTON, DC



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1995

93-888 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-052048-7



# BUREAU OF INDIAN AFFAIRS REORGANIZATION ACT OF 1995

Y 4. IN 2/11: S. HRG. 104-244

Bureau of Indian Affairs Reorganiza...

## HEARING

BEFORE THE

### COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

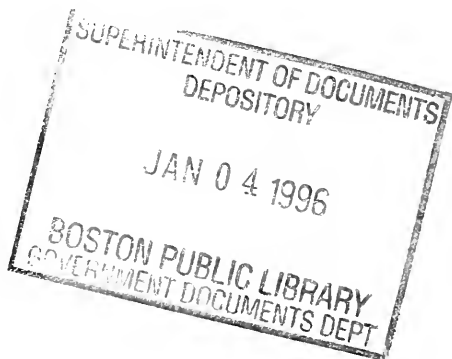
FIRST SESSION

ON

**S. 814**

TO PROVIDE FOR THE REORGANIZATION OF THE BUREAU OF INDIAN  
AFFAIRS

JUNE 28, 1995  
WASHINGTON, DC



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1995

93-888 CC

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-052048-7

## COMMITTEE ON INDIAN AFFAIRS

JOHN McCain, Arizona, *Chairman*

DANIEL K. INOUE, Hawaii, *Vice Chairman*

FRANK MURKOWSKI, Alaska

SLADE GORTON, Washington

PETE V. DOMENICI, New Mexico

NANCY LANDON KASSEBAUM, Kansas

DON NICKLES, Oklahoma

BEN NIGHTHORSE CAMPBELL, Colorado

CRAIG THOMAS, Wyoming

ORRIN G. HATCH, Utah

KENT CONRAD, North Dakota

HARRY REID, Nevada

PAUL SIMON, Illinois

DANIEL K. AKAKA, Hawaii

PAUL WELLSTONE, Minnesota

BYRON L. DORGAN, North Dakota

STEVEN J.W. HEELEY *Majority Staff Director/Chief Counsel*

PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

# CONTENTS

---

S. 814, text of .....	Page 3
Statements:	
Allen, William Ron, Chairman, Jamestown SKlallam Tribe of Indians .....	52
Jacobs, Chuck, Executive Director, Oglala Sioux Tribe on behalf of Wilbur Between Lodges .....	60
Johnson, Tadd, Executive Director and Counsel, Bois Forte Band of Chip- pewa Indians .....	56
Laffoon, Herman, council member, Colorado River Indian Tribes .....	58
Maddox, Deborah, Special Assistant to the Deputy Commissioner for Indian Affairs, BIA, Department of the Interior .....	40
Manuel, Hilda A., Deputy Commissioner for Indian Affairs, BIA, Depart- ment of the Interior .....	40
McCain, Hon. John, U.S. Senator from Arizona, chairman, Committee on Indian Affairs .....	1
McHugh, Stephen, Acting Attorney General, Colorado River Tribes .....	58

## APPENDIX

Prepared statements:	
Allen, William Ron .....	71
Between Lodges, Wilbur (with attachments) .....	90
George, Keller, President, United South and Eastern Tribes, Inc. ....	73
Goff, Ralph, Chairman, Campo Band of Mission Indians .....	131
Johnson, Tadd .....	76
Laffoon, Herman .....	85
Manuel, Hilda A. ....	69
Additional material submitted for the record:	
Charles, Frances G., Chairwoman, Lower Elwha SKlallam Tribe (letter) .	75
Walke, Roger, Analyst in American Indian Policy Government Division (memorandum) .....	141



# **BUREAU OF INDIAN AFFAIRS REORGANIZATION ACT OF 1995**

---

**WEDNESDAY, JUNE 28, 1995**

**U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.***

The committee met, pursuant to notice, at 10:08 a.m. in room 485, Russell Senate Office Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Inouye, Wellstone, and Thomas.

## **STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS**

The CHAIRMAN. I'd like to apologize for us beginning the hearing late this morning, we were required to have a series of five votes on the floor of the Senate this morning that began at 9 a.m. and it just completed. Also, I understand there is going to be another vote in about one-half hour to 40 minutes and we may have to take a short break but we will try to complete the hearing this morning. Senator Inouye will be here shortly.

In the meantime, I'd like to welcome the witnesses here today to present testimony on S. 814, the Bureau of Indian Affairs Reorganization Act of 1995.

This hearing is the third hearing this committee has held on Bureau of Indian Affairs [BIA] reorganization. Throughout this process, I've been very clear about my intention to move legislation which will substantially reform the way the BIA does business, and which reflects the goals and objectives of Indian country. That is why I am disturbed by recent reports that the reductions mandated under the National Performance Review are proceeding without interruption despite the efforts of this committee to forge a cooperative effort to reorganize the BIA with Indian tribes, the Congress and the Administration,

We will hear testimony today from tribes that are wrestling with dramatic staffing reductions which are underway without the benefit of tribal input and consultation. Indian tribes are justified in asking how these reductions will impact ongoing Federal trust obligations. That's why the central thrust of S. 814 is to establish a process which authorizes Indian tribes—let me repeat, it authorizes the tribes themselves to negotiate with the Secretary on how reorganization of the BIA should occur. The principle is one that is central to all modern Federal Indian policies from self-deter-

mination to self-governance. Any reform of the BIA must reflect this principle.

It's my hope that the efforts to implement the reductions called for under the National Performance Review will be delayed until such time as the affected Indian tribes have the opportunity to discuss the potential impacts of such reductions. Let me briefly discuss the legislation.

S. 814 builds upon the work and recommendations of the Joint Tribal Reorganization Task Force. It provides Indian tribes with the authority to reorganize and restructure the BIA at each level of the bureaucracy. Under this reorganization the savings realized through reorganization are mandated to remain within the Indian tribes.

The bill also provides for the transfer or delegation of authority to Indian tribes consistent with the principles of self-determination and self-governance. Under this legislation Indian tribes will be able to tailor the BIA to meet their unique circumstances and needs.

Indian tribes will be able to shape and define the trust relationship with the Federal Government. In addition, the bill addresses the longstanding problem of the BIA Manual. The bill requires the Secretary of the Interior to promulgate as regulations with the full participation of Indian tribes any provision of the BIA Manual he deems necessary. All other provisions of the manual must be revoked.

These 16,000 pages of regulations: No. 1, have not been promulgated in a public process; No. 2, are not generally available to Indian tribes or BIA officials; No. 3, have been cited by BIA officials as having the force of law; and No. 4, are apparently guarded in a vault somewhere in the bowels of the BIA. It's time to get rid of these excessive regulations. It's time to give the Indian tribes a seat at the table so that they can play a meaningful role in the promulgation of regulations. It's time to open the doors to the process and make clear that the BIA Manual is an internal guidance document and not a regulation with the force of law.

Let me conclude by saying that this legislation marks only the first step in carrying out the commitment made to Indian tribes when the Joint Tribal Reorganization Task Force was first chartered.

[Text of S. 814 follows:]



104TH CONGRESS  
1ST SESSION

# S. 814

To provide for the reorganization of the Bureau of Indian Affairs, and  
for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

MAY 17 (legislative day, MAY 15), 1995

Mr. MCCAIN (for himself, Mr. INOUE, and Mr. DOMENICI) introduced the  
following bill; which was read twice and referred to the Committee on In-  
dian Affairs

---

## A BILL

To provide for the reorganization of the Bureau of Indian  
Affairs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, TABLE OF CONTENTS, AND DEFI-**  
4 **NITIONS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the  
6 “Bureau of Indian Affairs Reorganization Act of 1995”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for  
8 this Act is as follows:

Sec. 1. Short title, definitions, and table of contents.

TITLE I—REORGANIZATION COMPACTS

- Sec. 101. Reorganization of area offices.
- Sec. 102. Reorganization of agency offices.
- Sec. 103. Reorganization of central office.
- Sec. 104. Savings provisions.
- Sec. 105. Additional conforming amendments.
- Sec. 106. Authorization of appropriations.
- Sec. 107. Effective date.
- Sec. 108. Separability.
- Sec. 109. Suspension of certain administrative actions.
- Sec. 110. Statutory construction.

#### TITLE II—AMENDMENT TO THE INDIAN SELF-DETERMINATION ACT

- Sec. 201. Budget development.

#### TITLE III—REFORM OF THE REGULATIONS OF THE BUREAU OF INDIAN AFFAIRS

- Sec. 301. BIA Manual.
- Sec. 302. Task force.
- Sec. 303. Authorization of appropriations.

1       (c) DEFINITIONS.—For purposes of this Act, the fol-  
2       lowing definitions shall apply:

3               (1) AREA OFFICE.—The term “area office”  
4       means 1 of the 12 area offices of the Bureau of In-  
5       dian Affairs.

6               (2) AREA OFFICE PLAN.—The term “area office  
7       plan” means a plan for the reorganization of an area  
8       office negotiated by the Secretary and Indian tribes  
9       pursuant to section 101.

10              (3) AGENCY OFFICE.—The term “agency of-  
11       fice” means an agency office of the Bureau of In-  
12       dian Affairs.

13              (4) AGENCY OFFICE PLAN.—The term “agency  
14       office plan” means a plan for the reorganization of

1 an agency office negotiated by the Secretary and In-  
2 dian tribes pursuant to section 102.

3 (5) BIA MANUAL.—The term “BIA Manual”  
4 means the most recent edition of the Bureau of In-  
5 dian Affairs Manual issued by the Department of  
6 the Interior.

7 (6) BUREAU.—The term “Bureau” means the  
8 Bureau of Indian Affairs.

9 (7) CENTRAL OFFICE.—The term “central of-  
10 fice” means the central office of the Bureau, that is  
11 housed in the offices of the Department in Washing-  
12 ton, D.C. and in Albuquerque, New Mexico.

13 (8) CENTRAL OFFICE PLAN.—The term  
14 “central office plan” means the plan for the reorga-  
15 nization of the central office negotiated by the Sec-  
16 retary and Indian tribes pursuant to section 103.

17 (9) DEPARTMENT.—The term “Department”  
18 means the Department of the Interior.

19 (10) DIRECTOR.—The term “Director” means,  
20 with respect to an area office, the Director of the  
21 area office.

22 (11) FUNCTION.—The term “function” means  
23 any duty, obligation, power, authority, responsibility,  
24 right, privilege, activity, or program.

1           (12) INDIAN TRIBE.—The term “Indian tribe”  
2       has the same meaning as in section 4(e) of the In-  
3       dian Self-Determination and Education Assistance  
4       Act (25 U.S.C. 450b(e)).

5           (13) SECRETARY.—The term “Secretary”  
6       means the Secretary of the Interior.

7           (14) SUPERINTENDENT.—The term “Super-  
8       intendent” means the Superintendent of an agency  
9       office.

10          (15) TRIBAL PRIORITY ALLOCATION AC-  
11       COUNT.—The term “tribal priority allocation ac-  
12       count”, means an account so designated by the Bu-  
13       reau, with respect to which program priorities and  
14       funding levels are established by individual Indian  
15       tribes.

16          (16) TRIBAL RECURRING BASE FUNDING.—The  
17       term “tribal recurring base funding” means recur-  
18       ring base funding (as defined and determined by the  
19       Secretary) for the tribal priority allocation accounts  
20       of an Indian tribe allocated to a tribe by the Bureau.

## 21       **TITLE I—REORGANIZATION** 22       **COMPACTS**

### 23       **SEC. 101. REORGANIZATION OF AREA OFFICES.**

24          (a) IN GENERAL.—Notwithstanding any other provi-  
25       sion of law, not later than 120 days after the date of en-

1 actment of this Act, the Secretary shall enter into negotia-  
2 tions with the Indian tribes served by each area office to  
3 prepare a reorganization plan for the area office.

4 (b) CONTENTS OF AREA OFFICE PLANS.—

5 (1) IN GENERAL.—Each area office plan that is  
6 prepared pursuant to this subsection shall provide  
7 for the organization of the area office covered under  
8 the plan. To the extent that the majority of Indian  
9 tribes served by the area office do not exercise the  
10 option to maintain current organizational structures,  
11 functions, or funding priorities pursuant to para-  
12 graph (2), the reorganization plan shall provide,  
13 with respect to the area office covered under the  
14 plan, for—

15 (A) the reorganization of the administra-  
16 tive structure of the area office;

17 (B) the reallocation of personnel (including  
18 determinations of office size and functions);

19 (C) the delegation of authority of the Sec-  
20 retary to the Director;

21 (D) transfers of functions;

22 (E) the specification of functions—

23 (i) retained by the Bureau; or

24 • (ii) transferred to Indian tribes served  
25 by the area office;

1           (F) the issuance of waivers or other au-  
2           thorities by the Secretary so that functions and  
3           other responsibilities of the Secretary may be  
4           carried out by the area office or transferred to  
5           Indian tribes;

6           (G) the promulgation of revised regulations  
7           relating to the functions of the area office that  
8           are performed by the area office or transferred  
9           to Indian tribes;

10          (H) the reordering of funding priorities;  
11          and

12          (I) a formula for the transfer, to the tribal  
13          recurring base funding for each Indian tribe  
14          served by the area office, of unexpended bal-  
15          ances of appropriations and other Federal  
16          funds made available to the area office in con-  
17          nection with any function transferred to Indian  
18          tribes pursuant to subparagraph (E)(ii).

19          (2) SHARE OF FUNDING.—An area office plan  
20          may include, for each Indian tribe served by the area  
21          office, a determination of the share of the Indian  
22          tribe of the funds used by the area office to carry  
23          out programs, services, functions and activities of  
24          the tribe (referred to in this subsection as the “trib-  
25          al share”).

1           (3) OPTION OF MAINTENANCE OF CURRENT  
2 STATUS.—At the option of a majority of the Indian  
3 tribes served by an area office, a reorganization plan  
4 may provide for the continuation of organizational  
5 structures, functions, or funding priorities of the  
6 area office that are substantially similar to those in  
7 effect at the time of the development of the area of-  
8 fice plan.

9           (4) APPROVAL OF AREA OFFICE PLAN BY IN-  
10 DIAN TRIBES.—Upon completion of the negotiation  
11 of an area office plan, the Secretary shall submit the  
12 plan to the Indian tribes served by the area office  
13 for approval. If a majority of the Indian tribes ap-  
14 prove the area office plan by a tribal resolution pur-  
15 suant to the applicable procedures established by the  
16 Indian tribes, the Secretary shall enter into a reor-  
17 ganization compact pursuant to subsection (c).

18           (5) SINGLE TRIBE AREA OFFICE.—In an area  
19 office that serves only 1 Indian tribe, if the tribe  
20 elects to develop a reorganization plan for the area  
21 office, the Secretary shall enter into negotiations  
22 with the tribe to prepare a reorganization plan for  
23 the area office. Not later than 60 days after the date  
24 on which a reorganization plan referred to in the  
25 preceding sentence is approved by the Indian tribe,

1 the Secretary shall enter into a reorganization com-  
2 pact with the tribe to carry out the area office plan.

3 (6) OPTION TO TAKE TRIBAL SHARE.—

4 (A) IN GENERAL.—If a majority of the In-  
5 dian tribes served by an area office fail to ap-  
6 prove an area office plan, an Indian tribe may  
7 elect to receive directly the tribal share of the  
8 Indian tribe.

9 (B) DETERMINATION OF TRIBAL SHARE.—

10 If an Indian tribe elects to receive a tribal share  
11 under subparagraph (A), the Secretary shall  
12 enter into negotiations with the Indian tribe to  
13 determine the tribal share of the Indian tribe.

14 (C) AGREEMENT.—Upon the determina-  
15 tion of a tribal share of an Indian tribe under  
16 subparagraph (B), the Secretary shall enter  
17 into an agreement with the Indian tribe for  
18 transferring directly to the Indian tribe an  
19 amount equal to the tribal share. The agree-  
20 ment shall include—

21 (i) a determination of the amount of  
22 residual Federal funds to be retained by  
23 the Secretary for the area office; and

24 (ii) the responsibilities of—

25 (I) the area office; and



1 (II) the Indian tribe.

2 (c) AREA OFFICE REORGANIZATION COMPACT.—

3 (1) IN GENERAL.—Not later than 60 days after  
4 the date on which a majority of the Indian tribes  
5 served by the area office that is the subject of a re-  
6 organization plan have approved the plan pursuant  
7 to subsection (b)(3), the Secretary shall enter into  
8 an area office reorganization compact with the In-  
9 dian tribes to carry out the area office plan (referred  
10 to in this subsection as the “area office reorganiza-  
11 tion compact”). The Secretary may not implement  
12 the area office plan until such time as the Indian  
13 tribes have entered into an area office reorganization  
14 compact with the Secretary pursuant to this para-  
15 graph. If the Indian tribes do not enter into an area  
16 office reorganization compact with the Secretary  
17 pursuant to this paragraph, the organizational struc-  
18 ture, functions, and funding priorities of the area of-  
19 fice in effect at the time of the development of the  
20 area office plan shall remain in effect.

21 (2) PROHIBITION AGAINST CERTAIN LIMITA-  
22 TIONS.—With respect to an Indian tribe that is not  
23 a party to an area office reorganization compact en-  
24 tered into by the Secretary under this subsection,  
25 nothing in this section may limit or reduce the level

1 of any service or funding that the Indian tribe is en-  
2 titled to pursuant to applicable Federal law (includ-  
3 ing any contract that the Indian tribe is entitled to  
4 enter into pursuant to applicable Federal law).

5 **SEC. 102. REORGANIZATION OF AGENCY OFFICES.**

6 (a) IN GENERAL.—Notwithstanding any other provi-  
7 sion of law, not later than 120 days after the date of en-  
8 actment of this Act, the Secretary, acting through the Su-  
9 perintendent (or a designee of the Superintendent) of each  
10 agency office, shall enter into negotiations with the Indian  
11 tribes served by each agency office to prepare an agency  
12 office plan for each agency office.

13 (b) CONTENTS OF AGENCY OFFICE PLANS.—

14 (1) IN GENERAL.—Each agency office plan that  
15 is prepared by the Secretary pursuant to this sub-  
16 section shall provide for the organization of the  
17 agency office covered under the plan. To the extent  
18 that the majority of Indian tribes served by the  
19 agency office do not exercise the option to maintain  
20 current organizational structures, functions, or fund-  
21 ing priorities pursuant to paragraph (2), the agency  
22 office plan shall provide, with respect to the agency  
23 office covered under the agency office plan, for—

24 (A) the reorganization of the administra-  
25 tive structure of the agency office;

1 (B) the reallocation of personnel (including  
2 determinations of office size and functions);

3 (C) the delegation of authority of the Sec-  
4 retary to the Superintendent;

5 (D) transfers of functions;

6 (E) the specification of functions—

7 (i) retained by the Bureau; or

8 (ii) transferred to Indian tribes served  
9 by the agency office;

10 (F) the issuance of waivers or other au-  
11 thorities by the Secretary so that functions and  
12 other responsibilities of the Secretary may be  
13 carried out by the agency office or transferred  
14 to Indian tribes;

15 (G) the promulgation of revised regulations  
16 relating to the functions of the agency office  
17 that are carried by the agency office or trans-  
18 ferred to Indian tribes;

19 (H) the reordering of funding priorities;  
20 and

21 (I) a formula for the transfer, to the tribal  
22 recurring base funding for each Indian tribe  
23 served by the agency office, of unexpended bal-  
24 ances of appropriations and other Federal  
25 funds made available to the agency office in

1 connection with any function transferred to In-  
2 dian tribes pursuant to subparagraph (E)(ii).

3 (2) SHARE OF FUNDING.—An agency office  
4 plan may include, for each Indian tribe served by the  
5 agency office, a determination of the share of the In-  
6 dian tribe of the funds used by the agency office to  
7 carry out programs, services, functions and activities  
8 of the tribe (referred to in this subsection as the  
9 “tribal share”).

10 (3) OPTION OF MAINTENANCE OF CURRENT  
11 STATUS.—At the option of a majority of the Indian  
12 tribes served by an agency office, an agency office  
13 plan may provide for the continuation of organiza-  
14 tional structures, functions, or funding priorities of  
15 the agency office that are substantially similar to  
16 those in effect at the time of the development of the  
17 agency office plan.

18 (4) APPROVAL OF AGENCY OFFICE PLAN BY IN-  
19 DIAN TRIBES.—Upon completion of the negotiation  
20 of an agency office plan, the Secretary shall submit  
21 the agency office plan to the Indian tribes served by  
22 the agency office for approval. If a majority of the  
23 Indian tribes approve the agency office plan by a  
24 tribal resolution pursuant to the applicable proce-  
25 dures established by the Indian tribes, the Secretary

1 shall enter into a reorganization compact pursuant  
2 to subsection (c).

3 (5) SINGLE TRIBE AGENCY OFFICE.—In an  
4 agency office that serves only 1 Indian tribe, if the  
5 tribe elects to develop a reorganization plan for the  
6 agency office, the Secretary shall enter into negotia-  
7 tions with the tribe to prepare a reorganization plan  
8 for the agency office. Not later than 60 days after  
9 the date on which a reorganization plan referred to  
10 in the preceding sentence is approved by the Indian  
11 tribe, the Secretary shall enter into a reorganization  
12 compact with the tribe to carry out the agency office  
13 plan.

14 (6) OPTION TO TAKE TRIBAL SHARE.—

15 (A) IN GENERAL.—If a majority of the In-  
16 dian tribes served by an agency office fail to ap-  
17 prove an agency office plan, an Indian tribe  
18 may elect to receive directly the tribal share of  
19 the Indian tribe.

20 (B) DETERMINATION OF TRIBAL SHARE.—

21 If an Indian tribe elects to receive a tribal share  
22 under subparagraph (A), the Secretary shall  
23 enter into negotiations with the Indian tribe to  
24 determine the tribal share of the Indian tribe.

1 (C) AGREEMENT.—Upon the determina-  
2 tion of a tribal share of an Indian tribe under  
3 subparagraph (B), the Secretary shall enter  
4 into an agreement with the Indian tribe for  
5 transferring directly to the Indian tribe an  
6 amount equal to the tribal share. The agree-  
7 ment shall include—

8 (i) a determination of the amount of  
9 residual Federal funds to be retained by  
10 the Secretary for the agency office; and

11 (ii) the responsibilities of—

12 (I) the agency office; and

13 (II) the Indian tribe.

14 (c) AGENCY OFFICE REORGANIZATION COMPACTS.—

15 (1) IN GENERAL.—Not later than 60 days after  
16 the date on which a majority of the Indian tribes  
17 served by the agency office that is the subject of an  
18 agency office plan have approved the agency office  
19 plan pursuant to subsection (b)(3), the Secretary  
20 shall enter into a reorganization compact with the  
21 Indian tribes to carry out the agency office plan (re-  
22 ferred to in this subsection as the “agency office re-  
23 organization compact”). The Secretary may not im-  
24 plement the agency office plan until such time as the  
25 Indian tribes have entered into an agency office re-

1 organization compact with the Secretary pursuant to  
2 this paragraph. If the Indian tribes do not enter into  
3 an agency office reorganization compact with the  
4 Secretary pursuant to this paragraph, the organiza-  
5 tional structure, functions, and funding priorities of  
6 the agency office in effect at the time of the develop-  
7 ment of the agency office plan shall remain in effect.

8 (2) PROHIBITION AGAINST CERTAIN LIMITA-  
9 TIONS.—With respect to an Indian tribe that is not  
10 a party to an agency office reorganization compact  
11 entered into under this subsection, nothing in this  
12 section may limit or reduce the level of any service  
13 or funding that the Indian tribe is entitled to pursu-  
14 ant to applicable Federal law (including any contract  
15 that the Indian tribe is entitled to enter into pursu-  
16 ant to applicable Federal law).

17 (3) COORDINATION WITH AREA OFFICE  
18 PLANS.—Each agency office reorganization compact  
19 entered into by the Secretary under this subsection  
20 shall specify that in the event that the Secretary de-  
21 termines that the agency office reorganization com-  
22 pact is inconsistent with an area office reorganiza-  
23 tion compact entered into under section 101(c), the  
24 Secretary, in consultation with the Indian tribes that  
25 are parties to the compact, shall make such amend-

ments to the agency office reorganization compact entered into under this subsection as are necessary to ensure consistency with the applicable area office plan.

**SEC. 103. REORGANIZATION OF CENTRAL OFFICE.**

(a) IN GENERAL.—Notwithstanding any other provision of law, not later than 120 days after the date of enactment of this Act, the Secretary shall enter into negotiations with Indian tribes to develop a central office plan. In developing the plan, the Secretary shall enter into negotiations on an area-by-area basis with a representative from each of the Indian tribes in each area, to determine the appropriate allocation of personnel and funding made available to the central office to serve the area and agency offices and Indian tribes in each area office.

(b) CONTENT OF CENTRAL OFFICE PLAN.—

(1) IN GENERAL.—The central office plan shall provide for determinations by the Secretary, on the basis of the negotiations described in subparagraph (a), concerning—

(A) which portion of the funds made available to the Secretary for the central office shall—

(i) be used to support the area and agency offices in each area; and



## 17

1 (ii) be considered excess funds that  
2 may be allocated directly to Indian tribes  
3 in each area pursuant to a formula devel-  
4 oped pursuant to paragraph (2)(J); and

5 (B) the allocation of the personnel of the  
6 central office to provide support to the area and  
7 agency offices.

8 (2) REALLOCATION OF FUNDS AND PERSON-  
9 NEL.—In developing the central office plan, to the  
10 extent that the Secretary and the Indian tribes do  
11 not exercise the option to maintain current organiza-  
12 tional structures, functions, or funding priorities, the  
13 central office plan shall provide, to the extent nec-  
14 essary to accommodate the determinations made  
15 under paragraph (1), for—

16 (A) the reorganization of the administra-  
17 tive structure of the central office;

18 (B) the reallocation of personnel (including  
19 determinations of office size and functions);

20 (C) the delegation of authority of the Sec-  
21 retary carried out through the central office to  
22 the Directors, Superintendents, or Indian  
23 tribes;

24 (D) transfers of functions;

25 (E) the specification of functions—

1 (i) retained by the central office; or

2 (ii) transferred to area offices, agency  
3 offices or Indian tribes;

4 (F) the issuance of waivers or other au-  
5 thorities by the Secretary so that functions and  
6 other responsibilities of the Secretary may be  
7 carried out by the central office or transferred  
8 to area offices, agency offices, or Indian tribes;

9 (G) the promulgation of revised regulations  
10 relating to the functions of the central office  
11 that are carried by the central office or trans-  
12 ferred to area offices, agency offices, or Indian  
13 tribes;

14 (H) the reordering of funding priorities;

15 (I) allocation formulas to provide for the  
16 remaining services to be provided to the area  
17 and agency offices and Indian tribes by the  
18 central office; and

19 (J) with respect to the allocation of funds  
20 to the area and agency offices and Indian tribes  
21 in each area, a formula, negotiated with the  
22 tribal representatives identified in subsection  
23 (a), for the allocation to the Indian tribes of a  
24 portion of excess funds described in paragraph  
25 (1)(A)(ii).

(c) CENTRAL OFFICE REORGANIZATION COM-  
PACTS.—

(1) IN GENERAL.—Not later than 60 days after the Secretary develops a central office plan pursuant to subsection (a), the Secretary shall, for each area office, enter into a central office reorganization compact with the Indian tribes in that area to implement the central office plan (referred to in this subsection as the “central office reorganization compact”). The Secretary may not implement the component of a central office plan relating to an area until such time as a majority of the Indian tribes in that area have entered into a central office reorganization compact. If a majority of the Indian tribes in an area do not enter into a central reorganization compact with the Secretary pursuant to this paragraph, the organizational structure, functions, and funding priorities of the central office relating to the area and agency offices and Indian tribes in that area and in effect at the time of the development of the central office plan shall remain in effect.

(2) COORDINATION WITH AREA AND AGENCY OFFICE PLANS.—Each central office reorganization compact entered into by the Secretary under this subsection shall specify that in the event the Sec-

1       retary determines that a central office reorganiza-  
2       tion compact is inconsistent with a related area of-  
3       fice reorganization compact entered into under sec-  
4       tion 101(c) or a related agency office reorganization  
5       compact entered into under section 102(c), the Sec-  
6       retary, in consultation with the Indian tribes that  
7       are parties to the central office reorganization com-  
8       pact, shall amend the compact to make such modi-  
9       fications as are necessary to ensure consistency with  
10      the applicable area or agency office plan.

11   **SEC. 104. SAVINGS PROVISIONS.**

12      (a) IN GENERAL.—All orders, determinations, rules,  
13   regulations, permits, agreements, grants, contracts, cer-  
14   tificates, licenses, registrations, privileges, and other ad-  
15   ministrative actions—

16          (1) that have been issued, made, granted, or al-  
17      lowed to become effective by the President, any Fed-  
18      eral agency or official thereof, or by a court of com-  
19      petent jurisdiction, in the performance of any func-  
20      tion that is transferred to Indian tribes pursuant to  
21      a reorganization compact that the Secretary enters  
22      into pursuant to section 101, 102, or 103; and

23          (2) that are in effect on the effective date of the  
24      reorganization compact, or were final before the ef-

1       fective date of the reorganization compact and are to  
2       become effective on or after such date;  
3 shall continue in effect according to their terms until  
4 modified, terminated, superseded, set aside, or revoked in  
5 accordance with law by the President, the Secretary, or  
6 other authorized official, a court of competent jurisdiction,  
7 or by operation of law.

8       (b) PROCEEDINGS NOT AFFECTED.—

9       (1) IN GENERAL.—The provisions of a reorga-  
10       nization compact that the Secretary enters into pur-  
11       suant to section 101, 102, or 103 shall not affect  
12       any proceedings, including notices of proposed rule-  
13       making, or any application for any license, permit,  
14       certificate, or financial assistance pending before the  
15       Bureau at the time the reorganization compact takes  
16       effect, with respect to the functions transferred by  
17       the reorganization compact.

18       (2) CONTINUATION OF PROCEEDINGS.—The  
19       proceedings and applications referred to in para-  
20       graph (1) shall be continued. Orders shall be issued  
21       in such proceedings, appeals shall be taken from  
22       such orders, and payments shall be made pursuant  
23       to such orders, as if the compact had not been en-  
24       tered into, and orders issued in any such proceed-  
25       ings shall continue in effect until modified, termi-

1 nated, superseded, or revoked by a duly authorized  
 2 official, by a court of competent jurisdiction, or by  
 3 operation of law.

4 (3) STATUTORY CONSTRUCTION.—Nothing in  
 5 this subsection shall be deemed to prohibit the dis-  
 6 continuance or modification of any such proceeding  
 7 under the same terms and conditions and to the  
 8 same extent that such proceeding could have been  
 9 discontinued or modified if this title had not been  
 10 enacted.

11 (c) NONABATEMENT OF ACTIONS.—No suit, action,  
 12 or other proceeding commenced by or against the Bureau  
 13 or by or against any individual in the official capacity of  
 14 such individual as an officer of the Bureau shall abate by  
 15 reason of the enactment of this title.

16 **SEC. 105. ADDITIONAL CONFORMING AMENDMENTS.**

17 (a) RECOMMENDED LEGISLATION.—After consulta-  
 18 tion with Indian tribes, the appropriate committees of the  
 19 Congress and the Director of the Office of Management  
 20 and Budget, the Secretary shall prepare and submit to the  
 21 Congress recommended legislation containing technical  
 22 and conforming amendments to reflect the changes made  
 23 pursuant to this title.

24 (b) SUBMISSION TO THE CONGRESS.—Not later than  
 25 120 days after the effective date of this title, the Secretary

1 shall submit to the Congress the recommended legislation  
2 referred to in subsection (a).

3 **SEC. 106. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums  
5 as may be necessary to carry out this title.

6 **SEC. 107. EFFECTIVE DATE.**

7 This title shall take effect on the date of enactment  
8 of this Act.

9 **SEC. 108. SEPARABILITY.**

10 If a provision of this title or its application to any  
11 person or circumstance is held invalid, neither the remain-  
12 der of this title nor the application of the provision to  
13 other persons or circumstances shall be affected.

14 **SEC. 109. SUSPENSION OF CERTAIN ADMINISTRATIVE**  
15 **ACTIONS.**

16 (a) IN GENERAL.—Notwithstanding any other provi-  
17 sion of law, during the 2-year period beginning on the date  
18 of enactment of this Act, the Secretary shall suspend the  
19 implementation of all administrative activities that affect  
20 the Bureau of Indian Affairs associated with reinventing  
21 government, national performance review, or other  
22 downsizing initiatives.

23 (b) CONSIDERATION OF COMPACTS.—During the pe-  
24 riod specified in subsection (a), the reorganization com-  
25 pacts entered into under this title shall be deemed to sat-

1 isfy the goals of the initiatives referred to in subsection  
2 (a).

3 **SEC. 110. STATUTORY CONSTRUCTION.**

4 Nothing in this title may be construed to alter or di-  
5 minish the Federal trust responsibility to Indian tribes,  
6 individual Indians, or Indians with trust allotments.

7 **TITLE II—AMENDMENT TO THE**  
8 **INDIAN SELF-DETERMINA-**  
9 **TION ACT**

10 **SEC. 201. BUDGET DEVELOPMENT.**

11 The Indian Self-Determination Act (25 U.S.C. 450f  
12 et seq.), as amended by the Tribal Self-Governance Act  
13 of 1994, is amended by adding at the end the following  
14 new title:

15 **“TITLE V—BUDGET**  
16 **DEVELOPMENT**

17 **“SEC. 501. PARTICIPATION OF INDIAN TRIBES IN THE DE-**  
18 **VELOPMENT OF BUDGET REQUESTS.**

19 **“(a) BUDGET REQUESTS FOR THE BUREAU OF IN-**  
20 **DIAN AFFAIRS.—**Notwithstanding any other provision of  
21 law, not later than 120 days after the date of enactment  
22 of this title, the Secretary of the Interior shall establish  
23 a program—

24 **“(1) to provide information to Indian tribes**  
25 **concerning the development of budget requests for**



1 the Bureau of Indian Affairs that are submitted to  
2 the President by the Secretary of the Interior for in-  
3 clusion in the annual budget of the President sub-  
4 mitted to the Congress pursuant to section 1108 of  
5 title 31, United States Code; and

6 “(2) to ensure, to the maximum extent prac-  
7 ticable, the participation by each Indian tribe in the  
8 development of the budget requests referred to in  
9 paragraph (1).

10 “(b) BUDGET REQUESTS FOR THE INDIAN HEALTH  
11 SERVICE.—Notwithstanding any other provision of law,  
12 not later than 120 days after the date of enactment of  
13 this title, the Secretary of Health and Human Services  
14 shall establish a program—

15 “(1) to provide information to Indian tribes  
16 concerning the development of budget requests by  
17 the Secretary of Health and Human Services for the  
18 Indian Health Service that are submitted to the  
19 President by the Secretary for inclusion in the an-  
20 nual budget referred to in subsection (a)(1); and

21 “(2) to ensure, to the maximum extent prac-  
22 ticable, the participation by each Indian tribe in the  
23 development of the budget requests referred to in  
24 paragraph (1).

25 “(c) REQUIREMENTS FOR PROGRAMS.—

1           “(1) IN GENERAL.—Each program established  
2       under this section shall, to the maximum extent  
3       practicable—

4           “(A) provide for the estimation of—

5           “(i) the funds authorized to be appro-  
6       priated on an annual basis for the benefit  
7       of Indian tribes; and

8           “(ii) for each Indian tribe, the portion  
9       of the funds described in clause (i) that  
10      will be provided for the benefit of the In-  
11      dian tribe;

12          “(B) provide, for each Indian tribe—

13          “(i) the opportunity to establish prior-  
14      ities for using the estimated funds de-  
15      scribed in subparagraph (A)(ii); and

16          “(ii) flexibility in the design of tribal  
17      and Federal programs that receive Federal  
18      funds to best meet the needs of the com-  
19      munity served by the Indian tribe; and

20          “(C) provide for the collection and dissemi-  
21      nation of information that is necessary for ef-  
22      fective planning, evaluation, and reporting by  
23      the Secretary of the Interior or the Secretary of  
24      Health and Human Services and Indian tribes  
25      concerning the comparative social and public

1 health conditions of Indian communities (as de-  
2 fined and determined by the Secretary of the  
3 Interior and the Secretary of Health and  
4 Human Services) at local, regional, and na-  
5 tional levels.

6 “(2) DUTIES OF THE SECRETARIES.—In carry-  
7 ing out the programs established under this section,  
8 the Secretary of the Interior and the Secretary of  
9 Health and Human Services shall—

10 “(A) use any information provided by In-  
11 dian tribes concerning the priorities referred to  
12 in paragraph (1)(B);

13 “(B) support the creation of stable recur-  
14 ring base funding (as defined and determined  
15 by each such Secretary) for each Indian tribe;

16 “(C) seek to maintain stability in the plan-  
17 ning and allocation of the amounts provided for  
18 in the budget of the Bureau of Indian Affairs  
19 and the Indian Health Service for Indian tribes;  
20 and

21 “(D) assess the Federal programs or as-  
22 sistance provided to each Indian tribe to deter-  
23 mine—

1                   “(i) the relative need for providing  
2                   Federal funds to carry out each such pro-  
3                   gram; and

4                   “(ii) the amount of recurring base  
5                   funding available to each Indian tribe to  
6                   carry out each such program.

7                   “(3) CONTRACTS, GRANTS, AND ANNUAL FUND-  
8                   ING AGREEMENTS.—To provide, to the maximum ex-  
9                   tent practicable, for the full participation by the gov-  
10                  erning bodies of Indian tribes on an effective govern-  
11                  ment-to-government basis in carrying out the collec-  
12                  tion and sharing of information under this section,  
13                  the Secretary of the Interior or the Secretary of  
14                  Health and Human Services may—

15                  “(A) enter into a self-determination con-  
16                  tract with an Indian tribe or make a grant to  
17                  an Indian tribe pursuant to section 102 or 103;

18                  “(B) with respect to the Secretary of  
19                  Health and Human Services, enter into a fund-  
20                  ing agreement with a participating Indian tribe  
21                  pursuant to title III; and

22                  “(C) with respect to the Secretary of the  
23                  Interior, enter into a funding agreement with a  
24                  participating Indian tribe pursuant to title IV.

1 **“SEC. 502. ASSESSMENT METHODOLOGY.**

2       “(a) IN GENERAL.—Not later than 180 days after  
3 the date of enactment of this title, the Secretary shall,  
4 in cooperation with Indian tribes, and in accordance with  
5 the negotiated rulemaking procedures under subchapter  
6 III of chapter 5 of title 5, United States Code, promulgate  
7 standardized assessment methodologies to be used in car-  
8 rying out any budget determination for the Bureau of In-  
9 dian Affairs concerning the levels of funding that are nec-  
10 essary to fund each program area (as defined and deter-  
11 mined by the Secretary) of the Bureau.

12       “(b) PARTICIPATION BY INDIAN TRIBES.—In carry-  
13 ing out subsection (a), the Secretary shall take such action  
14 as may be necessary to ensure, to the maximum extent  
15 practicable, the direct and active participation of Indian  
16 tribes at the local, regional, and national levels in the ne-  
17 gotiated rulemaking process specified in subchapter III of  
18 chapter 5 of title 5, United States Code.

19       “(c) COMMITTEE.—

20       “(1) COMPOSITION.—The negotiated rule-  
21 making committee established pursuant to section  
22 565 of title 5, United States Code, to carry out sub-  
23 section (a) shall only be comprised of—

24               “(A) individuals who represent the Federal  
25 Government; and

1                   “(B) individuals who represent Indian  
2                   tribes.

3                   “(2) REPRESENTATION BY INDIAN TRIBES.—A  
4                   majority of the members of the committee referred  
5                   to in paragraph (1) shall be individuals who rep-  
6                   resent Indian tribes.

7                   “(d) ADAPTATION OF PROCEDURES.—The Secretary  
8                   shall adapt the negotiated rulemaking procedures carried  
9                   out under this section in the same manner as the Sec-  
10                  retary adapts, in accordance with section 407(c), the pro-  
11                  cedures carried out pursuant to section 407.

12                  **“SEC. 503. REPORTS TO THE CONGRESS.**

13                  “(a) REPORT ON BUDGET NEEDS.—Not later than  
14                  the earliest date after the date of promulgation of the reg-  
15                  ulations under section 502 on which the Secretary of the  
16                  Interior submits a budget request to the President for in-  
17                  clusion in the annual budget of the President submitted  
18                  to the Congress pursuant to section 1108 of title 31, Unit-  
19                  ed States Code, and annually thereafter, the Secretary  
20                  shall prepare and submit to the President a report that—

21                         “(1) describes the standardized methodologies  
22                         that are the subject of the regulations promulgated  
23                         pursuant to section 502; and

24                         “(2) includes—

“(A) for each program area of the Bureau of Indian Affairs, an assessment of the level of funding that is necessary to fund the program area; and

“(B) for each Indian tribe served by a program area referred to in paragraph (2)—

“(i) an assessment of the level of funding that is necessary for each Indian tribe served by the program area;

“(ii) the total amount of funding necessary to cover all program areas with respect to which the tribe receives services (as determined by taking the aggregate of the applicable amounts determined under paragraph (3)); and

“(iii) a breakdown, for each program area with respect to which the Indian tribe receives service, of the amount determined under clause (ii).

**“SEC. 504. AUTHORIZATION OF APPROPRIATIONS.**

“There are authorized to be appropriated such sums as may be necessary to carry out this title.”.

1 **TITLE III—REFORM OF THE REG-**  
2 **ULATIONS OF THE BUREAU**  
3 **OF INDIAN AFFAIRS**

4 **SEC. 301. BIA MANUAL.**

5 (a) **IN GENERAL.**—Not later than 180 days after the  
6 date of enactment of this Act, the Secretary shall—

7 (1) conduct a review of all provisions of the  
8 BIA Manual;

9 (2) promulgate as proposed regulations those  
10 provisions of the BIA Manual that the Secretary  
11 deems necessary for the efficient implementation of  
12 the Federal functions retained by the Bureau under  
13 the reorganization compacts authorized by this Act;  
14 and

15 (3) revoke all provisions of the BIA Manual  
16 that are not promulgated as proposed regulations  
17 under paragraph (2).

18 (b) **CONSULTATION WITH INDIAN TRIBES.**—In car-  
19 rying out subsection (a), the Secretary shall, to the maxi-  
20 mum extent practicable, consult with Indian tribes in such  
21 manner as to provide for the full participation of Indian  
22 tribes.

23 **SEC. 302. TASK FORCE.**

24 (a) **ESTABLISHMENT OF TASK FORCE.**—



1           (1) IN GENERAL.—Not later than 90 days after  
2       the date of enactment of this Aet, the Secretary  
3       shall establish a task force on regulatory reform (re-  
4       ferred to in this section as the “task force”).

5           (2) DUTIES.—The task force shall—

6                (A) review the regulations under title 25,  
7       Code of Federal Regulations; and

8                (B) make recommendations concerning the  
9       revision of the regulations.

10          (3) MEMBERSHIP.—The task force shall be  
11       composed of 16 members, including 12 members  
12       who are representatives of Indian tribes from each  
13       of the 12 areas served by area offices.

14          (4) INITIAL MEETING.—Not later than 60 days  
15       after the date on which all members of the task  
16       force have been appointed, the task force shall hold  
17       its first meeting.

18          (5) MEETINGS.—The task force shall meet at  
19       the call of the Chairperson.

20          (6) QUORUM.—A majority of the members of  
21       the task force shall constitute a quorum, but a lesser  
22       number of members may hold hearings.

23          (7) CHAIRPERSON.—The task force shall select  
24       a Chairperson from among its members.

25       (b) REPORTS.—

1           (1) REPORTS TO SECRETARY.—The task force  
2       shall submit to the Secretary such reports as the  
3       Secretary determines to be appropriate.

4           (2) REPORTS TO THE CONGRESS AND TO IN-  
5       DIAN TRIBES.—In addition to submitting the reports  
6       described in paragraph (1), not later than 120 days  
7       after its initial meeting, the task force shall prepare,  
8       and submit to the Congress and to the governing  
9       body of each Indian tribe, a report that includes—

10           (A) the findings of the task force concern-  
11       ing the review conducted pursuant to subsection  
12       (a)(2)(A); and

13           (B) the recommendations described in sub-  
14       section (a)(2)(B).

15       (c) POWERS OF THE TASK FORCE.—

16           (1) HEARINGS.—The task force may hold such  
17       hearings, sit and act at such times and places, take  
18       such testimony, and receive such evidence as the  
19       task force considers advisable to carry out the duties  
20       of the task force specified in subsection (a)(2).

21           (2) INFORMATION FROM FEDERAL AGENCIES.—  
22       The task force may secure directly from any Federal  
23       department or agency such information as the task  
24       force considers necessary to carry out the duties of  
25       the task force specified in subsection (a)(2).

1           (3) POSTAL SERVICES.—The task force may  
2       use the United States mails in the same manner and  
3       under the same conditions as other departments and  
4       agencies of the Federal Government.

5           (4) GIFTS.—The task force may accept, use,  
6       and dispose of gifts or donations of services or prop-  
7       erty.

8       (d) TASK FORCE PERSONNEL MATTERS.—

9           (1) COMPENSATION OF MEMBERS.—Each mem-  
10      ber of the task force who is not an officer or em-  
11      ployee of the Federal Government shall be com-  
12      pensated at a rate equal to the daily equivalent of  
13      the annual rate of basic pay prescribed for level IV  
14      of the Executive Schedule under section 5315 of title  
15      5, United States Code, for each day (including travel  
16      time) during which such member is engaged in the  
17      performance of the duties of the task force. All  
18      members of the task force who are officers or em-  
19      ployees of the United States shall serve without com-  
20      pensation in addition to that received for their serv-  
21      ices as officers or employees of the United States.

22          (2) TRAVEL EXPENSES.—The members of the  
23      task force shall be allowed travel expenses, including  
24      per diem in lieu of subsistence, at rates authorized  
25      for employees of agencies under subchapter I of

1 chapter 57 of title 5, United States Code, while  
2 away from their homes or regular places of business  
3 in the performance of services for the task force.

4 (3) STAFF.—

5 (A) IN GENERAL.—The Chairperson of the  
6 task force may, without regard to the civil serv-  
7 ice laws, appoint and terminate such personnel  
8 as may be necessary to enable the task force to  
9 perform its duties.

10 (B) PROCUREMENT OF TEMPORARY AND  
11 INTERMITTENT SERVICES.—The Chairperson of  
12 the task force may procure temporary and  
13 intermittent service under section 3109(b) of  
14 title 5, United States Code, at rates for individ-  
15 uals that do not exceed the daily equivalent of  
16 the annual rate of basic pay prescribed for level  
17 V of the Executive Schedule under section 5316  
18 of such title.

19 (e) TERMINATION OF TASK FORCE.—The task force  
20 shall terminate 30 days after the date on which the task  
21 force submits its reports to the Congress and to Indian  
22 tribes under subsection (b)(2).

23 (f) EXEMPTION FROM FEDERAL ADVISORY COMMIT-  
24 TEE ACT.—All of the activities of the task force conducted

1 under this title shall be exempt from the Federal Advisory  
2 Committee Act (5 U.S.C. App.).

3 (g) PROHIBITION.—Beginning on the date of enact-  
4 ment of this Act, the Secretary may not—

5 (1) promulgate any unpublished regulation or  
6 agency guidance that affects Indian tribes; or

7 (2) impose any nonregulatory requirement that  
8 affects Indian tribes.

9 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated such sums  
11 as may be necessary to carry out this title.



Again, I look forward to the testimony we will receive today. Let me assure the witnesses that their full statements will be made a part of the record and we will start with our first panel, Hilda A. Manuel, Deputy Commissioner for Indian Affairs, BIA, accompanied by: Deborah Maddox, Special Assistant to the Deputy Commissioner for Indian Affairs of the BIA.

Welcome, Commissioner Manuel. How are you? I haven't had the opportunity of seeing you since yesterday.

Ms. MANUEL. I'm fine, thank you.

The CHAIRMAN. Ms. Maddox, welcome.

Please proceed with your testimony in whatever fashion you deem most effective.

**STATEMENT OF HILDA A. MANUEL, DEPUTY COMMISSIONER FOR INDIAN AFFAIRS, BIA, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY DEBORAH MADDOX, SPECIAL ASSISTANT TO THE DEPUTY COMMISSIONER FOR INDIAN AFFAIRS, BIA**

Ms. MANUEL. Good morning, Mr. Chairman and members of the committee.

Thank you for inviting the BIA to present their views on S. 814. With your permission, Mr. Chairman, I'd like to just highlight my testimony since, as you indicated, it will be made a part of the record.

The testimony that I was prepared to give today basically outlines what we believe is the process that will accomplish the same objective that S. 814 proposes. For that reason, the Department's position is that we do not need legislation to mandate the reorganization of the BIA. In addition to the process that I'm about to describe that we propose to undertake, there are other driving forces which we believe will force the BIA to reorganization and to restructure in accordance with what the tribes feel best suits their needs at the local and the area levels.

As you know, since it was your bill, Public Law 103-413, the amendments to the Self-Determination Act and the Self-Governance Act, provided an opportunity for the BIA to really start looking at how it conducts business with Indian tribes and how it conducts business internally. It provided, I believe—and certainly the Department and the Secretary believe and have so testified—the ultimate for the BIA to be forced to reorganization and restructure in line with the tribes' coming of age in terms of self-determination and self-governance. That process or that opportunity was provided as the tribal share determination process.

As you know, under your legislation there is an opportunity not for the self-governance tribes to take their shares of central office and the agency and area, there is also an option for the 638 tribes or at least those tribes who enter into 638 contracts to do likewise and ask for their shares of central office which seemed to be at the time the debate was being undertaken on Public Law 103-413, that central office was heavily padded with funding and bureaucrats. So that seemed to be the major focus at least in self-governance, in title IV of the Self-Governance Act where there was an absolute mandate for the Bureau to develop a formula to identify tribal shares.

In line with that, I directed in late February, early March, after meeting with all the area directors that probably this would be the most appropriate and most efficient way of not only involving the tribes in the actual decisionmaking process of determining tribal shares and what the residual functions would be at an area once the tribal share was determined, but it also provided an opportunity for us to begin looking at central office.

In that regard, I asked the area directors to start looking, over the course of the summer, 3 months or so, at putting together an agenda that would bring together the tribes in their particular areas to begin discussing and negotiating tribal shares and core residual functions that would remain at an area. In fact, to date a number of those meetings have occurred in conjunction with the fiscal year 1996 self-governance hearings that are currently taking place throughout the area offices and throughout the Nation.

What we are hoping will be achieved by the tribal share determination process at the area level is that all the tribes will participate, including the self-governance tribes, if they so desire in sitting down with the agency and the area and going through a listing of every program and every function and activity that occurs at that agency and area level. To assist in that process, we have put together a document which I had intended to bring with me today to share with the committee but which will be brought sometime this morning. It's a 50-page-plus document that contains descriptions of every program that is available at the area and agency level.

The purpose for developing such a document was that many times tribes were not familiar or were not certain what programs were supposed to do or what their true functions were. The idea was to develop a definition that everyone could understand and know firsthand what a particular program was intended to do.

That document has been distributed to all our area directors and is also available to the tribes to review as they undertake this tribal share determination process.

We also have extended to the self-governance tribes the opportunity to participate. The only condition that we have placed on their participation is that if they do participate in this process, they must be willing to put back on the table their previously determined tribal shares for renegotiation. I think that's only fair in light of the perception, whether it's true or not, that the non-self-governance tribes have of the self-governance tribes that they have taken more than their share of area and agency resources. This seems to be a better way of allowing all the parties, both non-self-governance and self-governance tribes to sit together at the table and really hash out and negotiate what a tribe's share is of agency and area.

At the central office level, in line with the mandate to develop the proposal and the formula for determining tribal shares, we are currently looking, as you will note in the testimony, at about \$4 million we have identified to go to the self-governance compacts or the self-governance tribes, and another \$22 million which we have approximated based on just very early indications from tribes who are interested in taking their share of central office, including the Navajo Nation which would represent the largest share and would

propose, at least for the 638 tribes, to publish a notice in the Federal Register that would provide a window of opportunity for them to come in and ask for their share.

The reason that we wanted to do that was because for budget purposes we need to have a good idea of how much money we're going to need to reprogram and in order to send the reprogramming letter up to the Hill, we felt that was probably the best way to, not only give notice to the tribes, but to invite their participation, if they so desire, in this process.

That tribal share determination process, we believe, provides the best mechanism to restructure the Bureau. The unfortunate thing about this process is that it is now somewhat in jeopardy because of recent House action which does not mandate but recommends in report language that we not deliver tribal shares at least at the central office level and instead, the funds that we've identified as tribal shares would go to the deficit.

If that language remains and if the Senate agrees with the House proposal to do that, then we will not be able to deliver tribal shares. We will still though have to reorganize and restructure because it's not going to be financially feasible for the Bureau to maintain the same level of staffing that it currently maintains which in central office headquarters—which includes Albuquerque West—approximately 900-some people. We will have to reduce the central office staffing to a level that is going to be compatible with the amount of money that we are going to be giving up in terms of the fiscal year 1996 reductions. At this point, I guess it is just a wait and see to see what happens on the Senate side.

In addition to the tribal share determination, my testimony notes that another obvious way that is going to force the Bureau to restructure is any reductions in our budget. Certainly, the House proposal at the time we were looking at the testimony and developing the testimony, at that time they were merely proposals and we didn't have a real good understanding of what the actual mark would be, and although we didn't take as much of a reduction as I had anticipated, the 3 percent reduction that we have taken is significant enough that not only would it reduce tribal shares if we are allowed to deliver tribal shares, it also means that we are still going to have to run a reduction in force in central office headquarters staffing. Any additional reduction on the Senate side will also result in the same action, that we will still have to reduce our FTE and staffing levels.

At this point, if you have any questions about the tribal shares, I'd be glad to answer. Otherwise, I'd like to make a couple of comments on a couple of issues that you have raised.

On the NPR, there is as I note in the bill a suspension of NPR initiatives, and I'm not sure what specifically tribes are complaining about in terms of NPR, but there is no NPR downsizing going on. I am aware of a couple of reorganizations that are being undertaken at one or two agencies, but those efforts were begun at least 1½ years before the National Performance Review initiatives were mandated and have no relationship to the NPR objectives in terms of the specific targeted reductions that the NPR has mandated.

The CHAIRMAN. Ms. Manuel, I hesitate to interrupt, but that's not the information we're getting from the field from the area di-



rectors and agency superintendents. They say they are carrying out NPR staffing cuts, so maybe we can clear that up. Maybe you can inform them that the staffing cuts that they are experiencing have nothing to do with NPR.

Ms. MANUEL. It may be that what has occurred is under the buyout authority, there was a requirement in the first round there was a two-for-one, you had to give up one position in order to affect a buyout. There were quite a few buyouts at the area and agency level that were taken. In accordance with the buyout legislation, they had to give up one position, so we do have I would say a considerable number of vacancies at agencies and areas that have not been filled because of that buyout requirement.

I have, though, advised the areas that because the Bureau is already way under its FTE ceiling and that I have the discretion to make the decision whether a particular agency has to give up a position or someone else that can afford to, that we have been giving the requesting areas authority to go ahead and fill a lot of those vacancies. I think that is probably where the confusion is in terms of the NPR streamlining. We had 800-plus buyouts in three rounds and so that is quite significant.

As the Secretary explained a couple of months ago when he appeared before this committee, the Vice President's NPR initiative was put on hold with respect to the Bureau and what was not clarified and what I have indicated in testimony, and what I've explained to tribes is that there were two reductions that we had received mandates to implement. One was a 50-percent reduction in central office-headquarters staff. Headquarters staff was defined as those individuals who exercised command and control. So it was clear that we were talking about Central Office West in Albuquerque and Central Office East here.

There was a second NPR mandate to reduce 50 percent in certain administrative positions that were targeted for reduction—budget analysts, procurement, acquisitions, contracting. We did not get a reprieve from that particular initiative and so we are still required to make the reductions in those specifically targeted administrative positions.

We were faced with the dilemma of whether to ask for a moratorium with regard to that reduction or to let it take its course and we chose to let it take its course because we found as we were looking at our operations in central office that many of the offices within BIA had positions that duplicated each other. For example, the Office of Trust had 40-some budget officers; the Office of Tribal Services had budget officers; the Office of Administration had budget officers. We didn't feel that being held harmless or exempt from that provision would hurt us because we saw there was a duplication of positions, so that directive is still being implemented. These only affect, at this point, central office.

On the BIAM, we agree and support completely the need to reform the BIAM and 25 CFR in the regulations. Again, part of the National Performance Initiative is to review the need for regulations as I'm sure you're aware as the President has indicated on several occasions and the Vice President has been televised throwing away volumes of regulations. We certainly agree that in the BIA, there are extensive BIA manuals and directives which really

as I understand it—I've never actually seen the complete set myself and only yesterday, I asked is there really a complete set of the BIAM someplace in the archives—apparently there is and we've not seen it.

The CHAIRMAN. We suggest you get hold of it right away.

Ms. MANUEL. The purpose of that, as I understand it, was to provide internal guidance, policy guidance to the BIA offices. As you've indicated, on some occasions those actual rulemaking and policy directives became more regulations that were put in place. Many of those are obsolete and dated and are no longer even referred to.

To date, we have, just in the process of regulatory review that we are currently undertaking, eliminated over 2,000 pages of probably just one volume of the BIAM and we continue that. We provided a report to the Department just 2 weeks ago. June 15 was the date we were asked to provide a report on the status of our regulations and directives. We did and we indicated in that—and we can certainly provide you a copy of the listing of that report—which regulations and which BIA manuals we intend to eliminate. So that is something that we are currently undertaking and carrying out.

On the provision on the savings, I guess our expectation was that as we developed the tribal share determination process and actually implemented that process, the effect would be that the tribes will get not only their shares, but also any savings that would result from the downsizing that naturally occurs as a result of the tribal share determination process. We support that and we certainly would expect that tribes should get their share and the savings.

The problem, again, as you may be aware, is that the congressional proposals are not going to return those savings to the tribes. We are concerned that by not returning savings to the tribes that it will severely impact their programs. One of the biggest complaints that I hear from tribes about this tribal share determination process and this increase or push that the Department has made to encourage tribes to contract and compact is that there is no real incentive for them to do that because they are not getting any additional dollars to enter into new contracts, and they certainly are not getting their contract support costs paid at the 100 percent level.

Not returning any savings to them as part of any reorganization would certainly be a blow to any interest and effort that they might want to undertake to take over programs from the Bureau. So I say that with great hope that something positive will result from the appropriations and the tribes will be allowed to realize those savings.

The CHAIRMAN. Does that complete your statement?

Ms. MANUEL. There are a couple of other issues, but I want to take any questions you might have about the tribal shares.

The CHAIRMAN. Why don't you complete your opening statement and then we will address those.

Ms. MANUEL. One other thing that I think is quite important and I certainly believe we are on the right track and we need to continue is the budget development process. We are in our 4th year now of implementing the task force recommendation to establish a tribal budget system.

Our experience to date has indicated that there are major improvements that we need to make. One of those improvements we need to make is that we need to start this process early enough to allow the tribes maximum participation. This year because of everything that was going on on the Hill, we were not able to get out the budget information to them until very late in April and so there were quite a number of concerns expressed by the tribes that they just did not have enough time to develop the kind of information and data they felt they need to justify their budget requests.

One of the areas, the Phoenix Area Tribes, has recommended to me and has put together some information that I think is going to be very useful as we develop this process. Their recommendation was that we start this perhaps in October or November and I think that is probably the right time frame in terms of developing at least some very preliminary estimates and numbers on what the needs are going to be and how we formulate the fiscal year 1998 budget. I am going to make that recommendation to the Assistant Secretary to start the process early enough and to develop the information.

One of the other concerns they had was that it was very technical, the information we were providing them was very technical, and required considerable interpretation and the time that they had to absorb all of that was just not enough and they felt they needed to have more time. That is something that I want to state we strongly believe and support and will continue to work on.

Thank you.

[Prepared statement of Ms. Manuel appears in appendix.]

The CHAIRMAN. Senator Inouye.

Senator INOUE. If I may just followup on that, Mr. Chairman, who initiates consultation with tribes? Do you call upon the tribes or do the tribes have to come knocking on your door?

Ms. MANUEL. We usually send out a letter under the Assistant Secretary or under my signature when we have a particular issue that we want to receive their comments and input on. On the streamlining, when we thought we were going to have to implement NPR, the consultation did not occur in the first instance. We were forced into a situation where we had to identify what our streamlining plan would look like and then we went out to the tribes and that was one of the reasons, I believe, that the tribes strongly opposed any streamlining but we prefer to initiate by letter advising them of whatever the issue is and then setting up meetings as appropriate.

Senator INOUE. How long does that process take, the invitation or the solicitation of views?

Ms. MANUEL. It depends. When we sent out the letter on the NPR initiatives, we sent the letter and materials I believe 1 month in advance; scheduled the hearings; published a notice in the Federal Register. So it took about 60 days before we actually got out to the field to hold the hearings and then the hearings were held over the course of 1 month. So we expended about 3 months' time just to initiate and to complete the consultation procession.

Senator INOUE. On page 6 of your prepared statement—I am asking this question in behalf of Senator Wellstone—at the bottom of the page, you say,

As part of Interior's RIG0-2 proposal announced in March, any savings resulting from BIA streamlining will be provided to tribal programs. Congressional proposals would not return the savings to the tribes and we are concerned that this will have a severe impact on their programs.

The Senator's question is, what congressional proposals are you referring to?

Ms. MANUEL. The House, in their mark, has suggested or recommended that we not provide tribal shares to tribes or that we not pay out tribal shares at this time and that those dollars or those savings would be returned to the Treasury.

Senator INOUE. I have a couple of questions to ask on behalf of Senator Simon. S. 814 is silent about education because since 1978, the Office of Indian Education Programs has implemented local control in all matters relating to Indian education. The task force made two recommendations: one was full implementation of Public Law 95-561; and the second, the Facilities Management Construction Center be under the direction of the Office of Indian Education Programs.

I understand 80 percent of the facilities in the Bureau are school facilities. What is the Bureau's position on the task force recommendation concerning education?

Ms. MANUEL. Our position on that particular recommendation is that we do not agree that FMCC should be transferred to education.

Senator INOUE. Why?

Ms. MANUEL. As you may know, some years ago, the Office of Construction Management, which was at that time under the BIA, was moved to the Department to correct certain deficiencies and to provide oversight to the program overall. We have received an indication from the Department—it's more than an indication, they have told us that they are ready to move OCM back to the Bureau. I believe once that occurs, with the improvements that have been made in the Office of Construction Management and the type of people that have been hired into that office, the Bureau will be capable of carrying out the responsibilities for FMCC.

Senator INOUE. Even if 80 percent of the projects are education-related?

Ms. MANUEL. I believe so, yes, sir.

Senator INOUE. The Senate Labor Committee has just cleared a job training consolidation bill which at the urging of the committee, this committee, endorsed the tribal employment program initiative under Public Law 102-477. The BIA has the responsibility for implementing the 477 initiative. How many BIA staff persons currently are assigned to the 477 initiative and where organizationally are they located?

Ms. MANUEL. I believe there are currently three staff assigned to that program. They are located in central office.

Senator INOUE. Tribes have complained to this committee that the BIA has failed to provide necessary contracting support for the 477 demonstration and they have had to wait over 6 months to receive their approved funds because of delays. Who in contracting is responsible for support for 477?

Ms. MANUEL. This is a longstanding problem that we have been trying to resolve and work with Senator Simon and his staff. I

thought we had reached some kind of an agreement on how we were going to resolve this.

Because of the type of contracting and procurement that we conduct and carry on in central office, there was no one in the contract and procurement shop that had the expertise to implement and produce the contract documents you need for the 477 Program. We've identified an individual who is able to do that, who is not in the central office, contract and procurement, but is in the eastern. We are hoping and certainly doing everything we can to ensure that even when that individual leaves, as we understand he has accepted a buyout and has deferred temporarily, that someone will be available to carry out the terms of the agreement that we have made with Senator Simon's office.

Senator INOUE. You indicated you have three staffers in central office to handle 477?

Ms. MANUEL. In the Office of Economic Development, yes.

Senator INOUE. Is that enough?

Ms. MANUEL. It's certainly not enough but I should note that the House has proposed to eliminate completely the Office of Economic Development and, in fact, it has been zeroed out. So if that proposal is enacted, we are going to lose those three people and we're going to have to look at figuring out some other way to accommodate the tribes under the 477 Program.

Senator INOUE. Thank you very much.

I'm going to vote also.

Senator THOMAS [presiding]. I'm going to hold down the fort while these guys go vote and then we'll try and go on.

Let me followup with several questions. I think this was mentioned. In your testimony, you indicated that the BIA is operating under a 1-year moratorium for the implementation; yet apparently, there are a number of reports from the field indicating that superintendents and area directors are proceeding with staff cuts under the National Performance Review. How do you explain that?

Ms. MANUEL. I explained earlier to Chairman McCain that I'm not sure what that is because there should not be any cuts being made under the NPR initiatives. My suspicion is that there is confusion out there and what has occurred is that there are a number of vacancies, quite a large number of vacancies at the area and agency levels that resulted from the buyouts. We had over 800 buyouts and the majority of those buyouts were at the agency and area levels. Those positions have remained vacant, although just in the past couple of months, I have been authorizing the areas to fill those vacancies, but I know that is a part of the problem.

Senator THOMAS. It's interesting because apparently they have indicated that they are doing it under the Performance Review.

Ms. MANUEL. That may be the case and I'll certainly look into it, but there should not be any cuts being made under the NPR initiatives.

Senator THOMAS. There is no congressional legislation that would ensure that the tribes are able to retain any savings. Do you have any indication from OMB or the Administration that there are savings they would indeed transfer to tribal governments?

Ms. MANUEL. Under the Reinventing Government Act, we call it RIGO-2, Secretary Babbitt announced that it was his intention

that any savings that resulted from any streamlining would be returned to the tribes. There is no congressional proposal that would mandate that. In fact, I believe that the recent House action would actually prevent that, the proposal that the House has made to return savings and tribal shares to the Treasury.

Senator THOMAS. I was interested in your comment about the timeliness or the difficulty of time with respect to the budget.

Ms. MANUEL. Yes.

Senator THOMAS. The Administration's budget was here in February, was it not?

Ms. MANUEL. That's right.

Senator THOMAS. You prepared it prior to that time?

Ms. MANUEL. At that time, we were not aware that the Department, and certainly the Bureau, was going to be looked at and scrutinized very carefully.

Senator THOMAS. I don't understand what that has to do with your budget. Didn't you prepare a budget for 1996?

Ms. MANUEL. Yes.

Senator THOMAS. And you shared that with the tribes, they had involvement in that?

Ms. MANUEL. What we were doing in April is the budget formulation for 1997. We're talking about two years. When we have the next consultation on the budget development, it will be for 1998, so this last exercise was for 1997. We did provide them what the President's request for 1996.

Senator THOMAS. Well, that's your job. To try and speculate what the Congress is going to do is a little out of your hands, isn't it?

Ms. MANUEL. That's right.

Senator THOMAS. So I was surprised that you said because of things on the Hill, you weren't able to get it done. I understand that.

Ms. MANUEL. We were not clear whether we were going to use the fiscal year enacted minus the rescission or whether we were going to go with the President's request, and very late, I guess, we finally heard from the Department and I imagine from OMB that we would just stick with the fiscal year 1996 request and not worry about everything else.

Senator THOMAS. Good advice, especially since you work for the President.

For 2 years when I was in the House on this committee, we worked long and hard on this reorganization thing. I must tell you I haven't had the opportunity to be as close to it as I was last year but I sense they haven't made much progress. You've talked a long time about it, but specifically with respect to the task force and the recommendations, I guess now the moratorium, really you aren't doing anything in terms of the reorganization, is that correct?

Ms. MANUEL. Well, the task force completed its work in August 1994. They issued their final report in January 1995. The final report is fairly recent. What we did is we went down every single every recommendation that the task force had come up with, even recommendations they made prior to finalizing their report, we identified it and we provided what our response was or our recommendation and what action we had taken. I think you'll see that

all along, even before the task force has finalized its report, we had implemented a number of their recommendations.

The report itself does not have a lot of specifics about what central office reorganization should be about. In fact, I believe there are maybe 2 pages, one paragraph that is dedicated to central office. The bulk of the report deals with the recommendations that are relative to overall management of the Bureau and also to the area office reorganization.

Senator THOMAS. I understand and I understand the report. The fact, is, however, that there has been fairly universal agreement over a number of years that there needs to be substantial change in BIA.

Ms. MANUEL. That's true.

Senator THOMAS. And I sense there is great resistance to doing that and that every time something moves, you have to study it, you have to have another hearing on it, you have to have a moratorium on it. The fact is that in the country, if you measure progress, if you measure performance, what kind of grade would you get in terms of change?

Ms. MANUEL. No, I agree and certainly in my lifetime, I'm aware that there has been at least ten years' worth of studies and reports that have been undertaken on the BIA. All of those have failed either because of employee resistance, tribal resistance and tribes themselves have not been all in agreement that the Bureau should be dismantled or reorganized. In fact, even today, you're not going to find the majority of tribes that are going to say the Bureau should be reorganized or dismantled. So there have been a number of factors that have prevented it, in addition to the resistance within the organization.

Senator THOMAS. I'm sure there have, but it's frustrating and I think it results in increasing concern that you go through this and through it and through it, and there's relatively little change.

Let me ask one more question, I see the Chairman has returned. At least in Wyoming, there has been fairly typically lately acting superintendents. Why is that?

Ms. MANUEL. That is one of the consequences of the buyouts. As you may be aware, the buyout legislation targeted 14's, 15's and members of the senior executive service. Consequently, superintendents who were in those grade levels took the opportunity to buy out.

Senator THOMAS. But it doesn't seem like that contributes to good management at all to constantly have acting people.

Ms. MANUEL. That's true and there shouldn't be. I am aware that there were a number of additional personnel issues that impact the situation in Wyoming in addition to the buyout which we are trying to resolve currently.

Senator THOMAS. Thank you for your answers.

Thank you, sir.

The Chairman [presiding]. Thank you, Senator Thomas. I know you have to go vote.

Ms. Manuel, I appreciate your patience this morning. I'm interested, of course, that the BIA does not believe that legislation is necessary. I'm not surprised, but again, for the record, I would note that since 1824, there's been 1,050 investigations, reports, commis-

sions and studies as to how the BIA should be reorganized. I guess this is 1,051, but I do not have confidence that without legislation, there can be a reorganization that is of any meaning.

I guess the best example I can use is the treatment by the BIA of the Joint Tribal Reorganization recommendations which were largely ignored, overturned and the tribes, because of that, almost unanimously rejected the recommendations of the BIA as far as reorganization was concerned. The record is clear on that. That's why we went back to the Joint Tribal Reorganization proposals rather than the BIA's reorganization proposal under the NPR. I believe the Secretary of the Interior properly stepped in and rejected the BIA proposal which couldn't have been reflective of the tribes, otherwise the tribes would not have been as angry as they were about it.

I have to tell you I'm not surprised that the BIA would not be supportive of legislation that would force them to reorganize, but I think I can make a strong case on the floor of the Senate that all efforts in the past have failed miserably. A visit to 1 of 100 Indian reservations would clearly indicate that is the case.

I'm certainly interested and pleased that 2,000 pages of the BIA Manual have been dispensed with. That only leaves us 14,000 pages to go. I strongly urge you and the Commissioner to get hold of this manual, to take a look at it, and see what needs to be done as quickly as possible. Whether it is reality or not, the perception amongst the employees of the Bureau of Indians Affairs is that these are regulations that they are required to enforce. That has to stop.

I'd note in your opposition to the provision requiring the BIA to develop standard assessment methodologies in an effort to determine the level of needed funding in each area, there is increasing pressure in Congress to examine the growing disparity in incomes between different Indian tribes, especially those with gaming revenues and tribes that don't have them. If we don't have standard measures, we have to rely on historic funding levels and those obviously have changed a great deal in the past few years. What is your alternative to that?

Ms. MANUEL. As we indicate in the testimony, we did try or pilot a trial run with the ICWA Program and it did not yield results that were acceptable to the tribes. In fact, the tribes who participated in that project felt that their expectation levels were raised so high and no delivery. What we're doing now as a result of that pilot project is we're putting together a final assessment, evaluation of that project to see whether modifications in the standard assessment methodology handbook and the process they have put together for us to look at might be necessary.

I agree that in light of the climate that we're operating under with the budget constraints that we do need to look at that and to develop some alternative. As you may know, under the budget development formulation process, the tribes do, to some extent identify their needs and when available, provide the information and the data to support their particular positions on an area. That might be something that we can look at to see whether we can expand or refine. There are a number of area tribes that are quite sophisticated and, in particular, the Phoenix Area Tribes, that have



done a considerable amount of work in this area and have produced, through the Intertribal Council, a number of recommendations and documents which they very freely share with the Bureau in hopes that we might adopt and look at some of their recommendations. My feeling is that is something we need to do.

The CHAIRMAN. Time marches on and the appropriations process continues. I think we're going to have to have some measure by which to gauge how we can best use these very scarce assets.

There have been 28 tribes that have decided to voluntarily exercise self-governance. Has there been any reduction in the bureaucracy in the BIA as a result of this?

Ms. MANUEL. Yes; there has. As the majority of those tribes are in the Juneau and Portland Area, there has been considerable downsizing in Portland and Juneau.

The CHAIRMAN. As a result of the self-governance?

Ms. MANUEL. As a result of the self-governance.

The CHAIRMAN. I'd appreciate it if you'd supply that for the record.

I thank you for being here today. I want to assure you that I understand your position but I don't think in the light of history, there is any argument that indicates the BIA can reorganize itself to be an efficient organization and I understand we have a fundamental difference of opinion. I respect your views and those of Ada Deer.

Ms. MANUEL. I do want to note in response to your statement about the Department ignoring the task force recommendations, what we did, and we will provide a copy for the record, is we went through each of the recommendations and identified them and indicated what our response was and what action we had taken. I think you will find that there has been a lot of misinformation that has been provided regarding what the Bureau really has done with the task force report. I think this will clarify some of that misunderstanding.

The CHAIRMAN. That misunderstanding probably should be first conveyed to the Secretary of the Interior who ordered that the recommendations not be implemented. Then I would suggest that the clearing up of that misinformation be communicated to the tribes who believe that their recommendations were overruled. Of course, we'd be more than happy to receive that information.

Ms. MANUEL. We have communicated this to tribes.

The CHAIRMAN. I think the record is clear that your recommendations made by the BIA were rejected by the tribes and ordered by the Secretary of the Interior not to be implemented.

Ms. MANUEL. That's not true.

The CHAIRMAN. That's not true? What is the case, the BIA recommendations are implemented?

Ms. MANUEL. All but three and I think that is what the Secretary said at the March hearing, that we have implemented in some form or fashion, all of the recommendations but three.

The CHAIRMAN. We will have following witnesses who will disagree with that characterization, I'm sure. I think several votes were taken by various tribal organizations rejecting your proposals, not your implementation of their proposals, but your proposals. We

may be talking about two different things here, so I appreciate that.

I have to tell you again, when we pass a law to protect children from being victims of abuse and 4 or 5 years after that bill is passed, the implementing regulations haven't even been written, I lose confidence and so do those victims. By the way, how are we doing on writing the regulations?

Ms. MANUEL. The final consultation on writing the regulations occurred last week in Albuquerque and as I understand, over 700 tribal representatives participated in that.

The CHAIRMAN. When can we anticipate the regulations to be promulgated?

Ms. MANUEL. Unless there were significant disagreements with the regulations, it would be just a matter of incorporating and writing up whatever the comments were. I would say we're probably talking about 30 to 60 days before it's published final.

The CHAIRMAN. Do you know when that legislation was passed by the Congress, what year?

Ms. MANUEL. 1988.

The CHAIRMAN. Seven years. I think that speaks for itself.

I thank you very much for being here this morning. I appreciate it.

We will have the next witnesses: William Ron Allen, Chairman, Jamestown S'Klallam Tribe; Tadd Johnson, Executive Director and Counsel, Bois Forte Band of Chippewa Indians; Herman "T.J." Laffoon, council member, Colorado River Indian Tribes, Parker, AZ, who is accompanied by Stephen McHugh, Acting Attorney General, Colorado River Indian Tribes; and Chuck Jacobs, Executive Director, Oglala Sioux Tribe. Please come forward and welcome.

Mr. Allen, welcome back before the committee. We'd like to hear your testimony. I'd ask the witnesses to summarize their testimony however they feel it would be most effective. Their complete statement will made a part of the record.

#### **STATEMENT OF WILLIAM RON ALLEN, CHAIRMAN, JAMESTOWN S'KLALLAM TRIBE OF INDIANS**

Mr. ALLEN. Thank you, Mr. Chairman, for the opportunity to be here. I'm feeling a little rough right now after flying the redeye in here to make sure I could be here in time.

The CHAIRMAN. We appreciate you coming.

Mr. ALLEN. For the record, my name is Ron Allen and I am the Chairman for the Jamestown S'Klallam Tribe and also the Executive Director, so I do have the responsibility for managing our programs on a hands-on basis.

Our tribe is one of the self-governance tribes. It is a small tribe, only 230 people, located in Washington State, so we are in the Portland Area where we are being very aggressive and active in the process of self-governance as well as the reorganization process. That process has had a very active participation by the Northwest tribes and there is a regional organization called The Affiliated Tribes.

As we deliberate on this whole effort of the tribes regaining control of the BIA or the Indian affairs programs, whether it is BIA, IHS or the other programs, it has always been an interesting chal-

lenge and observation from our perspective as tribal leaders when you look at all the various reports that you referenced earlier today.

We look back at the American Indian Policy Review Commission and its report and its work; you look at Kenny Smith when he was Assistant Secretary and the review and analyses that he conducted; and some proposals that Ross Swimmer had put together; and then Eddie Brown getting involved in this whole reorganization process; and on top of that, the self-governance initiative where the tribes were looking at a different track at taking control.

So when you look at all these different kinds of efforts, and I'm only describing a handful of them, it has been a challenge for us. I can say that it is quite frustrating because you ask yourself, you put all this work and effort into these studies, into these work groups, into these initiatives, you come up with these schemes and approaches to try to take the Federal resources that are made available to the tribes and more effectively use them, to try to make the system more effective and more responsive to our needs.

We certainly do have a complexity of issues in Indian country when you look at Alaska, California, Oklahoma, Sioux country, et cetera, and we are very unique, we are very different. Navajos aren't the same as Passamaquoddies. So the question becomes, what system works that would recognize the tribes' sovereign authority as governments? We are governments and in our opinion, the system over the decades or centuries has created a dependency in the tribes, an attitude, and a philosophical perception about how we should conduct business.

If you look at the IRA Act and how the Federal Government started weaving the Secretary of the Interior into the governing activities of the tribal governments. You see it permeated through the tribal constitutions, those that accept those forms of governing documents. You see it where many of the resolutions have to be approved by the Bureau. So this dependency, this paternalism permeates the system and it has slowly been building up.

To me it's a bit of a Catch 22. We've been building up our governmental capacity because of the needs out there, whether it's social needs, education needs, or economic development needs. The reality is, as we have testified many times before this committee, not a lot of the dollars get to the tribal trenches where we're actually getting the work done and not a lot of dollars are being transferred to the tribes to enable us to build up our governmental capacity to carry out these functions whether it's law enforcement, court, et cetera.

We're saying that we need to make something happen. We need to force something to happen. That is why we're supportive of S. 814, that's why we're supportive of the self-governance initiative because we think it is going to take a congressional prod to force it to happen. There are many players in the Administration who want it to happen, but the problem is that most of these players regularly are the policy people. They come in and they feel the sentiment of the Congress and the sentiment of the Indian leadership, and they say this is a really good idea, let's advance this concept. When you get down into the trenches, when you get to the agency level or area office level, now the rhetoric changes about what the initiative is. The rhetoric is often translated into termination, abro-

gation of treaty rights, absolving the Federal Government of its trust responsibilities, and none of those things are going to happen today, in our judgment.

We think that our leadership, our technical expertise, our legal expertise are always going to preserve that. We think Congress has become very sensitive to that obligation and responsibility. We feel that this kind of legislative requirement is essential.

What we are encouraged about is that the Congress has put its finger on the pulse of what a lot of tribal leaders have been involved with for a number of years on both tracks, the reorganization initiative and the self-governance initiative and said we're going to make things happen. As Hilda has said, some things are changing but not nearly fast enough.

I share a little concern with you in that I wish we had gotten this thing started a few years back because the funding pie that we're splitting up looks like it's shrinking so doggoned fast as we come up with the models and the methodology of how to come up with the shares, which is a very complicated and difficult process. It's shrinking so fast that it is creating a great deal of anxiety out there.

For example, the current consideration before this Congress about next year, reducing central office by \$26 million. That is a lot of money that we were going to access and we had argued before this committee and to the Administration to hold things tight. You have not even come close to living up to your responsibilities to Indian country in all of our areas of responsibility, so what we're looking for is a better way to do business and give us a chance to show we can use these resources effectively and meaningfully.

If those kinds of drastic cuts take place, then the models are meaningless because the dollars are not there because we have been working with the Federal system about what is residual. If everybody goes, whether it's self-governance or 638 contracting or whatever mechanism the tribes choose to get control of the resources, you get down to what are the fundamental responsibilities that central office should conduct and you get down to just a handful people. We have differences over ADP and things like that where they think it should still be 100 percent, but there are many areas where they agree and we're down to one person and all the 554 tribes are handling their own affairs. If those dollars are so drastically hit, that means there is no transfer of dollars and in our judgment all this effort has become fruitless and it really aggravates our relationship and our problem.

The fact is that we've come up with some sharing models and we have testified before that we see weaved into your proposed 814 the sensitivity of the uniqueness of each of the regions. As I mentioned before, Navajo is a different area, Portland is a different area, Aberdeen is a different area, and they need to be able to have some sense of control that is reflective of the way they want to see the system work. We think that system can be responsive to those needs and considerations as in the section that you have incorporated in terms of putting together a task force to review the BIAM, review the CFR regulations to see which ones of those regulations are appropriate.

In our judgment, the negotiated, rulemaking process is already moving forward on that track. They would benefit dramatically from what they are already doing. Should FARs even apply, is FAR even necessary, what regulations are essential for managing an Indian child welfare program or managing HIP programs, are there antiquated conditions and criteria for the programs? In our judgment, they are and they aren't reflective or sensitive to the needs of the various tribal communities. In our judgment, those responsibilities should be transferred to the tribal governments and let our ordinances, our government structure determine how those moneys should be used to address those responsibilities, whether it is law enforcement, housing, education, and we would do it and do it responsibly.

There are notions out there that we would not be responsible. We do not accept that view. We think that is a facade and it's a smoke screen, and it's insulting to the integrity of tribal leadership that we would trade off our education for our kids, our programs for our elders, or houses for the needy. That is not true, that is not what you're seeing and experiencing. We do need more, but what we want to do is look for a system that allows us to take those resources and more effectively utilize it. This proposal would help us accomplish that objective. It is something that is meaningful.

With that, I'd like to say thank you. I look forward to continuing to work with you and this committee to help make a difference because we believe we can make a difference.

[Prepared statement of Mr. Allen appears in appendix.]

The CHAIRMAN. Thank you. You make some very important points and I'd like to respond very quickly.

First of all, I share your concerns about the cuts. I can assure you that Senator Inouye and I do cause some trepidation when both of us take on an issue. I think Senator Inouye proved that in the recent rescission package deliberations where he was able to restore some very badly needed funds for Indian housing, but I also understand the threat as you describe it.

I also think that if I could just mention to those critics that say that tribal governments are unable to handle the responsibility, it seems to me that the members of the tribe would then try to put someone in office who can handle the responsibility, a process that we go through all the time. It's the worse kind of paternalism to think that Indian tribes do not have the expertise and talent to lead their own people. If we accept that, then we might as do away with the whole concept of self-determination and self-governance.

I thank you for your very important testimony and being with us again.

Did you want to say anything?

Senator INOUE. I just wanted to make certain in your, I think, very valid suggestion that paternalism still exists, are you suggesting that there has been very little, if any, consultation with Indian tribes on personnel actions?

Mr. ALLEN. In my judgment, it's been awkward. The last meeting Hilda referenced took place in Albuquerque last week and was a very large meeting. It's difficult sometimes to use that as a basis of consultation because the regions really do need to assess rec-

ommendations, approaches or considerations within the region to see how it applies before you can move into a national forum.

I don't have the answer, Senator, on what's the best system because we do have a real complex arena in Indian country in terms of how to reach out to the leadership to get involvement and consultation. It is a difficult task that the Administration is responsible to carry out. I think we can do better and a better system can be created in coordination with the tribal governments and tribal leaders.

The current system has been very awkward because it has often been after the fact. I'd also note that the political process moves on a fast track—that means here in Washington—and it moves faster than our political system and that is a hard thing to reconcile.

Senator INOUE. Don't feel badly, we're having the same problems here. We're still trying to define consultation, right?

The CHAIRMAN. Yes, sir; I wanted to point out that in this legislation, there's not a requirement for consultation because as Senator Inouye pointed out that is in the eye of the beholder. What is in this legislation is the requirement to negotiate. There is no doubt what negotiation means. Negotiation means sitting down to the table and not arriving at decisions until both parties are in agreement. Consultation can mean a meeting, as you mentioned, with 100 tribal chairman where they are given a lecture which is the type of process you have seen.

Mr. ALLEN. Many times over.

The CHAIRMAN. I think frankly one of the fundamental aspects of this bill is that it requires negotiation and I would hope that would change the entire dynamics of the relationship to the point where we could see true self-governance. I'm shorting the other witnesses, but I'd be glad to hear your response.

Mr. ALLEN. Can I make just one point on that issue?

The CHAIRMAN. Sure.

Mr. ALLEN. We've found ourselves negotiating a lot. We, in the Northwest, are constantly negotiating, whether it's fisheries or water rights, et cetera. In this arena where you're negotiating the conditions of how a system should work or what kind of resources should be made available to the tribe, who is the final decisionmaker? Negotiations apply, you come to terms with it, but the current system and situation is the final decisionmaker is the Secretary of Interior. So if the negotiations all of a sudden break off, then it goes to that level and they make a decision in the end. So it is a modified version of negotiations unless we change that system.

The CHAIRMAN. Thank you.

Mr. Johnson, welcome.

Mr. JOHNSON. Thank you, Senator.

#### **STATEMENT OF TADD JOHNSON, EXECUTIVE DIRECTOR AND COUNSEL, BOIS FORTE BAND OF CHIPPEWA INDIANS**

Mr. JOHNSON. Thank you, Mr. Chairman.

I'm pleased to be here today representing my own tribe, the Bois Forte Band of Chippewa. We are located about 50 miles south of the Canadian border in northern Minnesota. We recently became the first tribe to go self-governance under the new act which you

sponsored in the 103d Congress. I just want to make some brief points about S. 814.

First, the Bois Forte Band very strongly supports S. 814. It is a bill that is long overdue. Prior to being Executive Director and Counsel for the Band, for five years, I worked in the House of Representatives for the Subcommittee on Native American Affairs.

The CHAIRMAN. And you suffered no permanent damage?

Mr. JOHNSON. No discernible damage. [Laughter.]

The BIA reorganization was one of the subjects that we did three oversight hearings on in the 103d Congress. It is a subject that is not terribly sexy but something that needs attention.

In view of what the Department has said, I believe, to point out, I think there are downsizing efforts going on out in Indian country right now, and for the past 20 years under the Self-Determination Act, there was supposed to have been downsizing going on; certainly under self-governance, it's going on; and under the buyouts, it's going on even if there is a suspension of the NPR right now. There seems to be downsizing by attrition, so there will be a buyout or somebody will retire and the position simply won't be filled.

The CHAIRMAN. The question is whether that is doing damage or not, or is that a natural result of self-governance and other ways of being more efficient. That's a question I don't know the answer to.

Mr. JOHNSON. I don't either, but what your bill will do is add some rhyme and reason to the process.

I think there needs to be a centralized approach and by reorganizing agencies, area offices and central office all at the same time, I think any gaps there are in carrying out functions in the real world will be filled. Hopefully by involving the tribes, you will certainly get their input and their counsel on it.

Second, any reorganization effort needs to take into account the unique history of the BIA and the trust responsibility and the sovereignty of tribes. I think your bill does that by involving the tribes. The BIA is different from any other Federal agency. The only one that is close is the Indian Health Service. The BIA is there to carry out trust responsibilities to the Indian tribes and these are things that came from treaties and statutes in the course of dealings with Indian tribes.

Rather than applying the cookiecutter approach that the National Performance Review would have, the BIA should be treated differently. I was glad to hear the Department is taking the position that if there are cuts made and downsizing, that the dollars will go to the tribes, and that is exactly what should happen. The dollars should be tribalized because the tribes still have to carry out those trust responsibilities if the Department does not.

The BIA is also different in this sense. In other departments, if there are cuts made, there is an assumption that the State and local governments are going to be taking over the financing function of those services through their independent tax base and in State and local taxes. As you know, tribes don't have a tax base for the most part. Tribes can carry out the ministerial functions but they can't do the financial functions of the Federal Govern-

ment, so the BIA is unique and that is why there needs to be a unique reorganization plan for the BIA.

Finally, I just have two suggestions for the legislation. One is a time line, possibly 2 years deadline, to complete the legislation, the reorganization of all parts of the BIA. There is a provision in the bill that suspends the NPR for 2 years. I would suggest that it be made clear that is the drop dead date for when the reorganization is finished.

Finally, there is kind of a gap in the legislation as to what tribes don't go along with the majority, how they are going to obtain services and that needs to be clarified. They need to figure out if they are going to continue to get some kind of services from the BIA or if they are going to get some kind of special share through self-governance or self-determination agreements.

Just in conclusion, we support the bill. It's allowing tribes to reinvent BIA and that can only be an improvement.

Thank you.

[Prepared statement of Mr. Johnson appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Johnson.

The Honorable Herman "T.J." Laffoon? Welcome.

**STATEMENT OF HERMAN "T.J." LAFFOON, COUNCIL MEMBER, COLORADO RIVER INDIAN TRIBES, ACCOMPANIED BY STEPHEN McHUGH, ACTING ATTORNEY GENERAL, COLORADO RIVER TRIBES**

Mr. LAFFOON. Good morning, Mr. Chairman.

For the record, you have our testimony before you. I am Herman Laffoon, Jr., a member of the Tribal Council of the Colorado River Indian Tribes.

We are here today to present the issues relating to the self-governance, self-determination. According to our points, the tribes are in strong agreement with the objectives of S. 814, that one, the tribes should get the benefits of the downsizing; and that two, the authority be delegated to the local levels; and three, BIA reorganization be directed by the tribes.

Today, our main concern will be addressing the Colorado Agency restructuring and I am here specifically to explain our experience resulting from the BIA's failure to adequately consult the tribes and to integrate our concerns and views into its restructuring of the Colorado River.

In April 1994, we were informed at the local level that we would be in the process of restructuring our two systems, the power section and irrigation section. Our understanding was the restructuring was to be at the administrative level, which was directed to the agency department which these are utilities that provide services to our reservation.

These were our concerns and still are our concerns. The involvement, we were not involved in the process. So going back to July 1994, our local superintendent came to the council and introduced his restructuring and there again, where is the government-to-government relationship. We were never involved and that was an embarrassment to the tribe. So we started writing letters to our representatives. We first wrote to Assistant Secretary Ada Deer ad-



addressing the issue that we were in opposition to the restructuring at the local level.

Why does it have to be when these people are tribal members and it involves our tribal reservation, our tribal members, and there is no input from the tribal council. The Government is supposed to be working for the tribes, not the tribes working for the Government. That is our understanding. So we should have those good relationships between the Government.

In late November, we finally received a letter addressing the issue from Assistant Secretary Ada Deer information us to get involved with our area director and address the issues. We addressed the issues again but we were informed that the process was taking place. Again, no input from the Colorado River Indians. Our chairman addressed the issues again.

Until the day that we wrote to the Senate committee with our concerns through the channels, we were not given advice but through you people we received concerns, address the issues to the tribes.

Again, in late January at a meeting with the tribal leaders, our Chairman Daniel Eddie, presented the issue that the National Performance Review be stopped for a year. So we asked the question also at the agency level. Yes, we were told. A few months later, the process was done; we had a reduction-in-force at the Colorado River Agency. So in reality, there's embarrassment to the tribes on all matters that were addressed. Today, the National Performance Review has been delayed but not at the local level.

I was once employed by the Government and now I am on a council and our tribal members ask, please address the issues. These are our family members who are being hurt by this process. Get us the information; help us. We are the ones being penalized by this, by the BIA power section. Today, they have one foreman, three linemen. We have 50 miles of reservation and 50 miles wide. These people need the breaks, they need the rest to be with their families. We have monsoon seasons in Arizona and these outages go for days. So we are not providing the service to the people in the community.

Here they talk about saving dollars, dollars that will be thrown away foolishly when you go out and do contract services to the city. We are in real remote areas. Yuma is 1½ hours to 2 hours away.

When we have outages, these were the concerns we addressed to the BIA at the agency, the time frame to get the people to put the people back on line with service. We have a lot of elders on our reservation that need this service, this power. So, in essence, it doesn't seem fair to us that we weren't involved on all these issues, so today we all are being respected by our concerns at the national level but at the agency level, we are not.

I'd like to take the time to thank you for inviting us to give testimony on the issues today.

Thank you.

[Prepared statement of Mr. Laffoon appears in appendix.]

The CHAIRMAN. Thank you very much.

I did note in your written statement that you had several I think very important recommendations for the bill and I thank you very much for that.

Mr. Jacobs, welcome, sir.

**STATEMENT OF CHUCK JACOBS, EXECUTIVE DIRECTOR, OGLALA SIOUX TRIBE ON BEHALF OF WILBUR BETWEEN LODGES**

Mr. JACOBS. Thank you, Mr. Chairman.

Since President Between Lodges couldn't be here today, he asked me to tend in his place and present his prepared statement.

For the record, my name is Chuck Jacobs. I am the Executive Director of Oglala Sioux Tribe. I'm a McCarthur Fellow and a Rockefeller Fellow.

I wish to take this opportunity to thank you, Senator McCain, as the Chairman of the U.S. Senate Committee on Indian Affairs, for allowing me this opportunity to present testimony to the Committee on S. 814, a bill to provide for the reorganization of the BIA and for other purposes.

Since I am not the President, I thought I'd better read his prepared statement. It is very refreshing to know that a U.S. Senator of your stature is proposing such legislation. Allow me to quote you from your statement published in the Congressional Record dated May 2, 1995,

It is time to change the way this Nation deals with American Indians; it is time to bring an end to the long and dismal history to American Indians; it is time to break down the barriers to true tribal self-governance and self-determination by providing Indian tribes with authority to design the structure and function of its trustee, the BIA.

The Oglala Sioux Tribe agrees wholeheartedly with your statement. This bill, S. 814, goes a long way in realizing such goals. However, we must emphasize that the United States Government, not the BIA, is the trustee of the Oglala Sioux Tribe. The many regulations adopted for the administration of BIA programs are serious impediments to successful tribal administration of programs contracted by the tribes pursuant to Public Law 93-638 as well as other BIA programs, including the BIA administration of its programs.

We recommend a complete review of all such regulations in order to identify those regulations that impede successful tribal administration of Public Law 93-638 contracts and grants. Further, we need to identify those BIA regulations that impede timely delivery of BIA services to the target populations. Once identified, such regulations should be abolished. If the abolishment of those regulations cannot be timely accomplished, we recommend that tribal governments be authorized a waiver of such regulations in order to allow an efficient and successful administration of such contracts or grants.

The request for a waiver of various BIA regulations as they are identified as impeding and interfering with efficient program administration applies to BIA education, specifically those regulations set forth at 25 CFR 271.14, 11.2. At the present time, each BIA contract or grant has a very strict scope of contract requirements as set forth in the Part 100 of each respective Public Law 93-638 contract. It is our opinion that such boxing of services creates unnecessary overlapping of contract administration services. A strict reliance on Part 100 requirements results in an unnecessary encumbrance of program administration time with a resultant loss of

efficient program administration. A more liberal administration of contract requirements may allow program staff to provide services to more than one program resulting in more efficient program administration.

The Oglala Sioux Tribe is appreciative of your efforts to provide for meaningful consultation processes regarding BIA reorganization. We are attaching documents already presented to the BIA regarding the tribe's position in reference to the proposed reorganization.

In those documents, I'll note that 20 percent of our local BIA staff have been bought out and they haven't been replaced. I also must note that none of the employees have been targeted for that reduction.

However, as the largest tribe in the Aberdeen area, we are concerned with the language in S. 814 that requires the majority of Indian tribes to approve the area office plan by resolution pursuant to the applicable procedures established by the Indian tribes. We experienced this process while a member of the United Sioux Tribes organization. The majority of the tribes in the Aberdeen Area could, pursuant to the legislation, adopt a plan we do not agree with. This despite the fact our membership and land base far exceed the membership and land base of a combination of those tribes constituting majority.

The BIA is already planning a tribal shares program that is based upon a suspect formula. However the Oglala Sioux Tribe is in favor of receiving funds directly from the area office appropriation. Although the residual funds to be retained by the Secretary for the area office and the area office responsibility must be subject to tribal consultation and negotiation.

The Oglala Sioux Tribe fully supports the delegation of authority and functions from the area level to the agency level. However, such delegation of authority and functions shall be subject to full tribal consultation and negotiation. The Oglala Sioux Tribal Council has previously taken action to abolish the Aberdeen Area Office and transfer of such authorities and functions to the agency would effectively accomplish that action.

The Oglala Sioux Tribe has a concern that the amendment to the Indian Self-Determination Act, Title V, budget development does not result in an open competition among all federally-recognized Indian tribes for the budget appropriation.

The Oglala Sioux Tribe expresses its appreciation for your efforts to reorganize the BIA in order to decentralize the decisionmaking authority of the BIA, reduce regulatory requirements of the BIA, reform the BIA regulatory impediments to Indian education, and reform the current BIA budgetary process.

In closing, the Oglala Sioux Tribe reminds the U.S. Government that the Oglala Sioux Tribe did not enter into various treaties with the United States of America. We again take this opportunity to request the USA to honor the provisions of those treaties. We would also request that the committee grant to the Oglala Sioux Tribe additional time to submit to the record additional testimony or exhibits.

In these attachments, Mr. Chairman, you will also find a resolution from the Aberdeen Area Tribal Chairmen's Association; 10 of

the 16 tribes in the Aberdeen Area took the position that the BIA should be eliminated and a Department of Indian Affairs should be created. That is also the Oglala Sioux Tribe's official position and the documents are attached.

[Prepared statement of Mr. Jacobs appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Jacobs.

I noted that included in your statement are several exhibits and those exhibits will be made a part of the record as well.

Mr. JACOBS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you for being here this morning.

Mr. LAFFOON, NPR reductions are a convenient label, but the fact is the reductions are going on as you state. There had been a proposed closure of the Fort Yuma Agency which has had an effect and last year that action was suspended through language in the appropriations bill.

What is your view of what is going to happen regarding the maintenance of the power system unless something happens to change the proposed reductions at your agency?

Mr. LAFFOON. Right now, with the reduction-in-force, Senator, these jobs are being abolished and there is no way that the operation can function when they abolish these positions. Right now, before this reduction-in-force took effect, we were in need of more men on-line because of the safety precautions, working with the utility, with power, you need observers at all times. You can't go back and correct mistakes when limbs are lost or death occurs. Down the road as we go into it, I can't see how it's going to operate with the reduction-in-force and the abolishment of jobs if we go back and do what he plans on doing in the time frame involved, going out and doing contract services. It is an ongoing maintenance program that needs to be in effect at all times.

The CHAIRMAN. Has your tribe concluded a compact for gaming?

Mr. LAFFOON. Yes; we have, Senator.

The CHAIRMAN. Have you got a casino operating?

Mr. LAFFOON. Yes; we do. We just opened up in the last 3 months. We are in full support of it. We are not relying on dollars but tribal dollars, so it's 100 percent back to the tribes. We are in the process of opening at the Bluewater Marina with the hotel-casino type, so these dollars we are looking for. The overall structure of self-determination or being involved with this, we are looking into that matter of taking over the project but in that timeframe, we need the support of the Government to help us.

The CHAIRMAN. How large is your operation?

Mr. LAFFOON. The casino?

The CHAIRMAN. Yes?

Mr. LAFFOON. I think right now we have about 200 machines on-line.

The CHAIRMAN. Has it been successful?

Mr. LAFFOON. Yes; it's very successful. We have two categories, the young river whippersnaps I guess we would call them on the river, the jet boats and whatnot, and in the wintertime, we have our snowbirds. Our snowbirds haven't arrived yet, so that will be a real big asset to the casino.

The CHAIRMAN. I've had the privilege of having lunch with your tribal council at Blue Lagoon Marina. I'll be interested to visit it

now that it's undergone the transformation that it has. You have an excellent location geographically. Probably there's a million of those jet boats that pass by. It certainly sounds like there is any-way.

Thank you.

I want to ask all of you the toughest question of all that is going to come up whether we want it to or not. Before I do that, I want to thank all of you for your support of this legislation and I'd like to know if there is any Indian tribal government that is opposed to this legislation? If you hear of them, we'd like to hear from them and try to address their concerns. So far, we have not received any information that anyone is opposed to the legislation.

Here is the problem. Suppose we have no cuts at all in funding for the BIA, IHS, et cetera, but still we all know there are not enough funds to go around. We encourage self-governance, we encourage economic development; some tribes are doing well, gaming aside; some tribes are not doing well. I have a reservation in my State where people still live in holes in the ground; there's people who live in other parts of my State who are living quite well who are Native Americans. Of course there are native people in other parts of the country who are living extremely well, which is wonderful. We don't want everyone to just have a house, we want everyone to have the opportunity to have a mansion. We want people not to just reach a minimum level, we want everyone to succeed in our society and only be limited by the extent of their ambition.

After all the sermonizing, we're going to get down to a problem. Some might call it means testing; some might call it a basis of need; some may call it punishing tribes who are doing well; some may call it singling out tribes that are engaging in Indian gaming, some will argue that the Federal obligation still exists even if they are economically self sufficient; others will argue that when you have tribes that are in terrible need and Native Alaskans in the same condition that these Federal funds should be distributed on some basis of need; and then others would argue that we should not penalize tribes for being successful.

I think this issue is before the Congress; I think sooner or later, people are going to want it addressed whether the people in this room want it addressed or not, and I'd like to hear some ruminations on the subject beginning with you, Chairman Allen.

Mr. ALLEN. I understand what you have been wrestling with and I suppose I take a perspective that I think it's in the tribes' best interest to pursue a track where even the Federal Government has not been able to provide the kind of resources we think it should to take care of our responsibilities, if it has provided us an opportunity to generate our own resources, then it's in our best interest to pursue that track, to reduce the Federal Government's obligations to us, and to enhance our sovereign independence. From that perspective, to me it is very important.

I would weave into that the consideration that not every tribe is going to go into gaming. Gaming happens to be a luxury for a small sector of the tribes and not all gaming tribes do exceptionally well like the Pequots or the Shakopees, for example.

The CHAIRMAN. Many of them are located in geographically remote areas where it simply is not going to work.

Mr. ALLEN. It's not going to work, period. So they need other kinds of opportunities. They still need economic development, you can still do economic development wherever they are located. They just have to have the resources and figure out what works in their area.

As we move forward, I guess my opinion is that what we're trying to do with self-governance, for example, is create a base and work off the base and simply stop and say that is about as far as we can go. There are some qualifiers to that approach for example, if some responsibility comes around the corner and it becomes an extensive responsibility and the tribe does not have the capacity to handle that new responsibility, then we would look to the Federal Government to address that and it may be mitigation of some treaty right that has been abrogated because of an act of Congress or something along that line.

The CHAIRMAN. Including the fact that there may be gaming operations that do well at first, because it's kind of a novelty thing, and then that novelty has a tendency to tail off. I say that not because I'm an expert on gambling, but we've noticed, for example, State lotteries where they are having to do more and more to try to get people to buy lottery tickets. In many States, they continue to tail off and so there is that problem too. What tribe may be doing well today, five years from now, they may not have that revenue stream at all.

Mr. ALLEN. I agree. I get frustrated when we get too isolated on that gaming industry because we don't know where it's going and what the States will do that will change the conditions of the tribes' competitiveness, so that's a separate matter.

The question you're getting at is, what can the Federal Government do, recognizing that it has as serious deficit problem it has to grapple with and we are caught up in it. To me, there are clearly countless tribes out there who have very serious needs and don't have the same opportunities other tribes do. Maybe we probably should try to look at some sort of approach.

Right now, we're in the volunteer mode. If a tribe volunteers, it won't pursue dollars and the question is how far will that go. I've seen tribes that develop more money through their own resourcefulness and because of that they become more confident because they are able to secure higher quality personnel which makes them more capable of going after the dollars and they are more competitive than the tribe who doesn't have the resources.

That is a serious problem and I think it gets at the heart of one of your issues. So to me, in my opinion, it's in the tribes' best interest if Congress can help them become more independent, then we should follow that track because it allows us to be truly independent and cuts those strings, the attachments that go along with the Federal dollars.

The CHAIRMAN. Thank you. Again, I do not want to burden you with problems which I sought when I ran for office, but we're now being tugged or squeezed by this on one side, the prospect of declining Federal funding which is declining in terms of real dollars; and at the same time, an attack on the Indian gaming industry which would reduce that tribal revenue stream. So it's kind of a double jeopardy here.

Mr. Johnson.

Mr. JOHNSON. I see, I guess, two issues in your question. One, I sort of addressed in my testimony dealing with equity. When I was working for the House side, I worked for a California Congressman and I used to get a lot of tribes from the Sacramento Area Office telling me that they are grossly underfunded in comparison to other area offices. Now I work in the Minneapolis Area Office and when tribes from the Minnesota Area Office learned I was coming out here, they said you should really address the subject of equity among area offices.

There is a view that there are certain area offices that are better funded than others and my suggestion was to have GAO or the Inspector General take a look at that.

With regard to means testing, I think a lot of tribes know the history of the United States and know how easily termination can occur and how easily we start down a road a little ways and it's dangerous. Right now, if there is a hurdle that's very high to get through and maybe only two tribes in the United States might meet that hurdle, all of a sudden there is a hurdle existing that Congress can lower. That would scare a lot of tribes, I'm guessing.

With regard to gaming, for my tribe, we have gaming but we're so far north we still have sixty percent unemployed. So we're going to continue to need Interior appropriations to exist, but I think a lot of people would feel that there's a danger in means testing. I know it's going to be a hot political issue, but I think a lot of tribes would feel that way and I know our tribe would.

The CHAIRMAN. Thank you very much.

Councilman Laffoon.

Mr. LAFFOON. Yes on the issue we're addressing, you're talking about priorities in the gaming industry that we're all new in and to my knowledge, when issues are addressed within your State, we should all band together. It may not be addressing our concerns, but their concerns also, so that means a big part in our banding together, the sovereignty. We talk about the issue of means testing in our gaming industry. All these issues play a big role.

As the Colorado Tribes we have our natural resources that we rely on, our agriculture, our development on the reservation, and now we have gaming coming into effect and our priorities in the streamlining of how we want the infrastructure in the future, we have that in the process for seeing how we can take care of our tribal members. So we at a little advantage today of becoming this and when it first came down to our priorities on our properties, our projects, we said, how can we do this and we can't prioritize one over the other. They are all concerns that should be addressed and how can we deal with them. With our income resources coming in, we try to provide our reservation and dealing with this. It's not much but we maintain and with the 638 contracts coming into effect, it helps us. We are a big tribe and our river tribes are in the same process. We deal with three other tribes within our river tribes, so with the allocation where we start spreading down the dollars to our reservations, we try to provide for and help one another but there is always the position that the tribe is bigger and how the dollars are being spread around. So this is all our concerns with the issues.

If it would be down to the point that we can give these dollars back and the self-determination, we would believe very strongly in this goal of trying to accomplish these goals in the self-determination of our tribes.

The CHAIRMAN. Thank you very much.

Mr. Jacobs.

Mr. JACOBS. Senator McCain, I think the leadership at the Oglala Sioux Tribe acknowledges the position the United States is in with the Federal deficit and the position that its politicians are in. The position that they are in is the treaties with the Federal Government and their membership, so they are being torn apart also.

The whole issue of gaming, a good part of the leadership it's their position, and our experience—we've been involved in gaming for 9 months now—what we're seeing is that we aren't bringing in a lot of outside income, we're hurting our own people because of our geographics. We are not near a large metropolitan center. We know the answer isn't in gaming.

We're starting to look real hard but there are some benefits that any tribe has as a nation. We feel there are other nations out there that are interested in doing business within the United States and want to access the tribes because of their special relationship with the United States. We are working real hard in developing these relationships and it will benefit with the permission of the United States Government.

A lot of them are afraid of taking a step because of the violation of Federal law, but in saying that, the potential that exists won't just benefit the tribes, it will benefit the States in which we're implanted. Once the States and the surrounding communities—because they are going to be hit also with downsizing of the Federal Government—they will acknowledge or come to realize the benefit of the reservations to these communities.

In South Dakota, there are nine Sioux Reservations. Indian Country Today did an article and we impact that State to a greater extent than the Ellsworth Air Force Base in Rapid City. Part of my thesis in graduate school, I did an impact study. We pumped, all said and done after we applied this stuff, to the extent of \$250 million to the State of South Dakota, so we are an asset to the area and not just in terms of getting Federal dollars, but also our cultures.

Once the people we live with on a daily basis quit seeing us as competing entities and a drain on their tax base and start working with us, then the answer or part of it is team plan with our local, regional economies, local political bodies, but because of our special status as Indian tribes, that is something the rest of the world wants and the whole issue of preferred trading partners that the other nations are seeking with the United States is an extreme potential.

The CHAIRMAN. I thank you very much. Obviously the Oglala Sioux have a unique perspective and an important one. What is the size of your tribe now who are enrolled?

Mr. JACOBS. The Oglalas number 24,000 I think.

Mr. ALLEN. Mr. Chairman, could I make two more points about this issue you're raising?

The CHAIRMAN. Yes.



Mr. ALLEN. In order for us to pursue a track where we become more independent because of our capacity to generate alternative revenues, infrastructure is a key component. If we don't have the capacity for roads, utilities and communications systems, we can't generate alternative revenue options.

The second point is the IGRA Act provides the opportunity for exclusionary market conditions for the tribes. If that changes dramatically, then that pulls the carpet out from a great opportunity for tribes to generate capital, at least in those arenas.

The CHAIRMAN. I agree. Maybe I'm not being totally objective but I think we can beat back those efforts to breakdown that exclusivity from one direction, but I believe that in many States, you're going to see a proliferation of non-Indian gaming which competes with Indian gaming, and thereby harms or dramatically reduces the revenue stream that way. I think we can beat back the efforts here in Congress to basically emasculate Indian gaming, but I'm not sure over time, 5 or 10 years, that you're just not going to see a large proliferation of gaming. We're already seeing that in States like Louisiana, Illinois, all up and down the Mississippi River and other places. That concerns me and obviously that is perfectly within the authority of the States. If they all decide they want to be like Nevada, then they can but that is of greater concern than the immediate attacks on Indian gaming to me.

As you think about this issue, I'd appreciate your input because I believe that it is going to be an issue that is going to be discussed and debated and I would like to have the input of the people who are going to be affected by any kinds of means testing, whatever you want to call it. It's always in the eye of the observer as to how you want to describe it, but it may mean something that's different from the way we've been doing business before and could be perceived by many, perhaps correctly, as an abrogation of our responsibilities.

I want to thank you all very much for being here. I know you came a long way and I appreciate your continued input.

This hearing is adjourned.

[Whereupon, at 12:06 p.m., the subcommittee was adjourned.]



---

---

# APPENDIX

---

---

---

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

---

---

PREPARED STATEMENT OF HILDA A. MANUEL, DEPUTY COMMISSIONER OF INDIAN  
AFFAIRS, BIA, DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to present the views of the Department of the Interior on S. 814, a bill to provide for the reorganization of the Bureau of Indian Affairs [BIA]. As the Secretary of the Interior expressed on March 8, 1995, the Department shares the Committee's interest in changing the way this Government carries out its special legal responsibilities, consistent with the government-to-government relationship.

The Department also agrees that Indian Tribes, in this special relationship, must be afforded an active role and participation in any reorganization effort. Tribes must be ensured of the protection and preservation of the Federal trust responsibility as set out in treaties, legislation, executive orders, and court decisions. In this regard, the Department supports the overall intent and objective of S. 814.

The Department does not, however, believe that legislation is necessary to mandate the reorganization of the BIA. We say this with full knowledge that many tribes and perhaps even members of this Committee are skeptical that this can happen without a mandate from Congress. Certainly we are aware of the numerous studies and efforts undertaken over the past 20 years which have failed to reorganize, restructure, and reduce the size of the BIA. This time we are confident that reorganization will occur because of several major driving forces.

The Department strongly believes that Pub. L. 103-413, the Indian Self-Determination Act Amendments of 1994, enacted by Congress last year to make the Self-Governance demonstration project a permanent program, will serve to be the single most compelling force to drive the reorganization of the BIA. This recently enacted legislation presents an unprecedented opportunity for Tribes to participate in the reorganization of the BIA through the tribal shares determination process it authorized. This process sets out the framework to expand the scope of contracting and compacting by Tribes for all functions, activities, and services, without regard to the organizational level within the BIA.

The process also provides an unprecedented opportunity for the BIA to re-examine its role and to begin focusing on carrying out only those core residual functions which are necessary in fulfilling the Federal trust responsibility.

As tribal shares are negotiated and residual functions identified, the BIA will need to restructure and downsize to accommodate the delivery of tribal shares to Tribes. Moreover, as tribal contracting and self-governance compacting increase, BIA staffing will be reduced to a level that allows the BIA to carry out only those core residual functions agreed to by both the Tribes and the Secretary as necessary to fulfill the trust responsibility and provide remaining services to Tribes that choose not to contract or compact. To this end, the BIA has developed, in conjunction with self-governance negotiations, a process to begin determining tribal shares in partnership with the Tribes at each Area Office.

It is our hope that through this partnership, agreement can be reached on how best to restructure the BIA. All of the 12 Area Directors have already been in-

structed to convene meetings with Tribes in their administrative jurisdictions to begin the process which we hope will result in the identification of uniform program definitions, the level of program functions to be left at their Area Offices, formulas for the determination of tribal shares for those remaining programs, and the core residual functions.

At my direction, the Areas began the initial stages of this process in April 1995, with a goal of a deadline for completion of the first round of negotiations and meetings by the end of the summer. We expect that both Agency and Area programs will be reviewed and discussed to arrive at a tribal share for every Tribe in an Area, including those who choose to rely on BIA for delivery of program services. This is necessary in determining the size of the programs that will remain with BIA.

The self-governance Tribes whose tribal shares have previously been determined, and in most cases already base-transferred, will be given the option of participating along with the non-self-governance Tribes. However, their participation is conditioned on their agreement at the outset to put back on the table their previously negotiated tribal shares for re-negotiation. We expect that this process will result in restructured Agency and Area Offices in line with the final negotiations on tribal shares and residual functions.

This same process is also central to the reorganization of the Central Office. As this Committee is aware, the BIA recently submitted the final report on Central Office formulas in accordance with Pub. L. 103-413. The proposal calls for the determination of tribal shares for both the self-governance and self-determination contracting Tribes. Because Tribes will not be contracting or compacting for programs, functions or activities at the Central Office level, the tribal share represents a portion of the administrative overhead as such costs are specifically and functionally related to the delivery of services to all Tribes.

The proposal includes one formula for Central Office operations funds and another for pooled overhead and special programs. The formulas were calculated by determining the residuals for each line item listed under both operations and pooled overhead. Included as part of the proposal is a description of services a Tribe can expect to receive if the Tribe opts to take its share of funds controlled by the Central Office. At a minimum, we know that tribal shares will have to be delivered to all self-governance Tribes. For the self-determination contracting Tribes, we propose to publish a 30-day notice in the Federal Register announcing the opportunity to take tribal shares. We will deliver tribal shares to as many as apply during the 30-day window.

Our best estimate of the total dollar value of tribal shares we will have to deliver from the Central Office, based on the President's 1996 budget, is approximately \$4 million for self-governance Tribes and \$22 million for contracting Tribes. As one can see from this description of the tribal shares determination process, there is no doubt that the BIA will have to reorganize in order to deliver the shares to those Tribes requesting them.

While this process provides the surest means to reorganize and downsize the BIA, there are other factors which we expect will influence this effort. The most significant will be any reduction in the BIA's budget for fiscal year 1996. We are aware of the preliminary proposals being made by the House of Representatives to reduce the BIA budget below the fiscal year 1995 enacted level. In anticipation that the Senate may concur with at least some of the reductions in the House proposals, we are already in the process of prioritizing programs, operations, and staffing needs from which a smaller amount of tribal shares would then be identified and distributed. Even with a small percentage reduction in the BIA fiscal year 1996 budget, the BIA will have to further reduce its staffing and operations in order to deliver tribal shares.

In addition, the streamlining effort currently in effect under the mandates of the National Performance Review initiative will also impact on the BIA organization. While the BIA has been given a moratorium on the NPR's 50 percent overall reduction of headquarters and Central Office FTE's, the BIA must still meet the 50 percent reduction in administrative positions in budgeting, accounting, acquisitions, and personnel.

In this regard, the BIA has begun to plan for the consolidation of these types of administrative positions in one location. I should emphasize that the consolidation of these administrative functions will not have the impact some Tribes have contended. These functions represent the administrative services provided to the BIA as a Federal organization and do not include the services provided to Tribes in conjunction with the self-determination contracting and compacting processes.

Moreover, we do not expect all Area administrative functions to be relocated to the common support center until it becomes cost effective to do so. We expect that as more and more Tribes take their tribal shares of Area Office functions, the Areas will not be able to afford maintenance of separate administrative functions. Until

this occurs, the consolidation of administrative services will affect only the Central Office headquarters functions. Now that I have described our proposal for reorganization, I want to comment briefly on several provisions contained in S. 814.

We strongly support the objective of the savings provision in S. 814. The Department agrees that as more and more functions are transferred to the Tribes, and delegations of authority enacted to facilitate decisionmaking at the lowest level, Tribes will require additional resources to meet their increased authorities and responsibilities. As part of Interior's REGO II proposal announced in March, any savings resulting from BIA streamlining will be provided to tribal programs. Congressional proposals would not return the savings to the Tribes, and we are concerned that this will have a severe impact on their programs.

With regard to the provision calling for suspension of NPR initiatives, we believe that it is not necessary to legislatively mandate such a suspension. As we previously reported, the NPR streamlining initiative to reduce headquarters staffing has been suspended in response to strong tribal opposition. Although the BIA must still meet the NPR reductions in targeted administrative positions described earlier, we do not oppose such reductions. For too long the BIA, like other Federal Agencies, has had the option of duplicating administrative services throughout the organization. Commonsense in this tight budget climate dictates that the BIA can no longer afford duplicative administrative services.

We note the provision; on Budget Development and would like to report that the BIA is in its fourth year of implementing the Joint Tribal/BIA/DOI Task Force on Reorganization recommendation to establish a Tribal Budget System (TBS). Even though we have implemented the TBS, we continue to work on improvements to further accommodate the budget formulation needs of the Tribes. However, we do not believe that legislation is needed to implement this recommendation.

We also do not support the provision on Standard Assessment Methodology because we believe it will not be an efficient or effective process to provide an objective measure of the overall need for government funded services. We reached this conclusion after the Indian Child Welfare Assistance Program used this methodology over the past year in a pilot program. The Tribes who worked extensively on this high cost project will agree with us and note that they were extremely disappointed because their hopes had been raised without achieving tangible results. We will prepare a final evaluation on this project, but our initial response to this provision is that it is too costly and produces questionable results.

Finally, with regard to the proposal to reform the regulations of the BIA, we agree and are pleased to report that we have already begun to re-examine the need for extensive regulations and the appropriateness of the directives contained in the BIA Manual. To date, over 2,000 pages of the BIA Manual have been eliminated. In addition, we have recently completed a regulatory review and noted all the provisions of Title 25 of the Code of Federal Regulations which can be eliminated. This is an effort that the BIA fully supports and will implement wholeheartedly.

In closing, I want to thank the Committee for inviting me to present the Department's views on this legislation. I am committed to working with you and the Tribes to reorganize the BIA into a more responsive, cost efficient, BIA.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

---

PREPARED STATEMENT WILLIAM RON ALLEN, CHAIRMAN AND EXECUTIVE DIRECTOR,  
JAMESTOWN S'KLALLAM TRIBE

Mr. Chairman and Committee members, on behalf of the Jamestown S'Klallam Tribe, I thank you for the opportunity to share my views on the proposed bill to instruct the Administrations BIA to restructure, streamline, and provide opportunities to transfer resources and control to the Tribes. Between the efforts of the Self-Governance and Tribal/BIA/DOI Reorganization Task Force processes, the Tribes have been working very hard at developing and recommending opportunities for the Congress and the Administration to consider in improving the use of the Federal resources and commitment to the American Indian and Alaska Native communities. We are very pleased that the Congress recognizes that a great deal of work has taken place over the past 6 years and we do not want to lose this opportunity.

The Tribes have driven the efforts to restructure the BIA system to gain control over the limited Federal resources, but because of differences of opinion in Indian Country, some are interested preceding slower than others. Many of the concerns have been heard many times, including the fears of termination, the elimination of the trust and treaty rights, and the fear of losing the cost savings to the U.S. Treasury instead of passing them on to the Tribes. We firmly believe that the future lies

in the Tribes ability to eliminate the stifling controls of the bureaucracy that suppress the sovereign authority of the Tribes. Over the decades of bureaucratic control, the Tribes have lost their confidence or ability to manage their affairs without the BIA's oversight. In our opinion, we need a political opportunity nudge to restore this capability. The Tribes will make a few mistakes, but we'll also learn from them as well.

As we have stated before to this Committee there are a number of factors and initiatives that influence this reorganization effort including: (1) the National Performance Review goals; (2) OMB budget reduction directives and limitations; (3) the Republican-led Congress' "Contact with America" objectives; (4) both the Self-Determination and Self-Governance goals; and (5) the unique relationship between the Tribes and the United States Government. Our Tribes believes with the support of the Congress, the Tribes can continue to advance our efforts to regain control over our affairs, which will enable the Tribes to be in a better position to address the needs of our people. We believe that your proposed legislation is consistent with these goals and provide for the flexibility necessary to respond to different approaches from each region or within the region. In our judgment, aggressive and meaningful changes will not take place without strong leadership and clear Oversight hearing on S. 814 Testimony by W. Ron Allen Senate Committee on Indian Affairs June 28, 1995 instructions from the Congress. The Administrative system will continue to play the Tribes against each other to the detriment of each other and the survival of the system.

It is a good idea to provide for specific schedules to begin the development of reorganization plans at each central, area, and agency level. These plans will reveal to the Congress the desire of the Tribes to control how they would like to reshape the system to better accommodate their views of how the Federal Tribal relationship should be structured. The proposals and recommendations that have developed from both the Self-Governance and the Tribal/BIA/DOI Task Force process recognizes the differences of approach and issues due to the diversity of Tribal conditions. S. 814 takes these conditions into consideration.

Our Tribe has previously testified to this Committee recommending that the Congress should pursue a legislative mandate to prod the decentralization process along. The testimony we provided encouraged you to take into consideration the model plan and approach developed by the Portland Area. We also encouraged that the Committee recognize the fact that each area's conditions are different and may want to take a different approach. The Navajo Nation is an example of this point, where you have only one Tribe and their conditions would require a different approach. It is critical that the legislation remain flexible. Each area will want to determine for themselves the level of residuals for each program of function, the methodology for determining Tribal shares, or how the delegations of authority for the various functions and/or duties shall be structured.

As the Tribes consider and redesign the BIA's system, we urge this Committee to remember that it is very difficult to get a consensus among the Tribes regarding a singular approach. This political reality is relative to designing legislation that allows for various regions to pursue an aggressive redesign approach and others to pursue a more conservative or traditional approach. Our hopes are that Tribal leaders will come to realize that the aggressive approach that is coming from the Self-Governance and Portland Area Tribes is not on a track that will result in termination or absolve the Federal Government from its Treaty or Trust responsibilities. All Tribes with Treaties with the United States Government are very protective of this historic and legal commitment between our nations. Yet, the Tribes must learn to look for better ways to manage our affairs, programs, and services.

The Tribes would urge that the Savings provision remain in the final legislation to accommodate the timing and schedule necessary to coordinate the development of comprehensive reorganization plans. This schedule will assure that our efforts will not be obstructed due to the NPR process or other cost savings initiatives that remove programs and resources before we have identified a better use for these limited funds between the Tribes and the right-sizing of the bureaucracy. We would urge that the Committee consider specific language to instruct the Administration to transfer these cost savings to the Tribes, as opposed to some other Federal initiative. The Tribes would be very disappointed if we spent a considerable amount of energy designing a more appropriate and effective system and the cost savings went to the Department of Treasury. Indian Country has consistently communicated to the Congress and the Administration the fact that the United States had not lived up to its financial and service obligations for the land relinquished through Treaties and other agreements.

We are very encouraged with the idea of incorporating into this legislation instructions to more actively involve the Tribes in the Budget formulation process. An

objective that we have been pursuing through the Self-Governance process and similarly developing through the Reorganization Task Force is the identification of Base Budgets for the Tribes. There are a number of activities and priorities that are important to assure the success of this restructuring initiative including the adequate funding of contract support category. If the Tribes are going to continue to carry out the Congress' mandates for the advancement of Self-Determination and Self-Governance, the budget must be planned and developed to assure stability and reliability. Tribal involvement is essential to achieve sensitivity toward all the Tribal conditions, whether they are large or small or whether or not they have other resources to access.

Regarding the proposal to establish a Task Force to review the BIA Manual and other regulations, we agree with the approach and the membership composition. It is important that this Task Force not be limited simply the BIA Manual, but also explore eliminating all excessive regulations that should be deferred to Tribal regulations and ordinances.

**In conclusion**, our Tribe is a small but we have been very involved with the Tribes' collective effort to regain control over our affairs. We firmly believe that if we are going to truly exercise our sovereignty we must have control over the resources available to provide services and assistance to our people. This political approach to transfer control to the local governments is a bi-partisan concept that we all believe is the way of the future. Our Tribe is very appreciative of the hard work of the visionary Tribal leadership and this Committee to explore new frontiers to make a difference. We will continue to be patient, yet determined because we believe that we can improve our situation despite the current limitation of available financial resources, as well as the reluctance of the bureaucracy to change. We urge that you to pass this legislation to clearly communicate to the Administration that the Congress desires the Tribes to be in control of their destiny. Our Tribe looks forward to continuing to work with this Congress to reshape our Federal/Tribal relationship to strengthen the Tribes' sovereign governmental foundation.

PREPARED STATEMENT OF KELLER GEORGE, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES, INC.

Mr. Chairman and Members of the Committee, thank you for the opportunity to present my written testimony. I would like to begin by thanking Chairman McCain and Vice Chairman Inouye for their work on Indian issues and continued commitment to improving the lives of Native Americans. Your advocacy on behalf of Native Americans is greatly appreciated in Indian Country.

My name is Keller George. I am a member of the Oneida Nation, which is located in central New York, and President of the United South and Eastern Tribes, Inc. ("USET"). On behalf of our member tribes, I would like to convey USET's additional appreciation to you, Mr. Chairman, for holding this series of hearings on BIA reorganization and your expressed desire to achieve meaningful BIA reform by the end of this year. We are committed to working with you to reach a consensus on how to make the BIA a more efficient, effective, and tribal-friendly organization.

First, let me give you some general information about our organization. USET is a non-profit, inter-tribal organization that was created in 1969 by the leadership of four tribes in the Southeast. Originally formed as the United Southeastern Tribes, the name was officially changed in 1978 to the United South and Eastern Tribes to better reflect the geographical spread of our membership. Today, we are composed of 21 federally recognized tribes ranging from Florida to Maine, South Carolina to Texas.

USET serves its members in two principal ways. First, we provide a forum for the exchange of information and ideas among the tribes, and second, we provide a vehicle for the tribes to jointly receive contracts and grants from Federal and state agencies as well as the private sector.

The current USET membership is composed of the following tribes: the Chitimacha Tribe of Louisiana, the Coushatta Tribe of Louisiana, the Eastern Band of Cherokees of North Carolina, the Miccosukee Tribe of Florida, the Mississippi Band of Choctaw Indians, the St. Regis Band of Mohawks of New York, the Seminole Tribe of Florida, the Seneca Nation of New York, the Penobscot Nation of Maine, the Passamaquoddy Pleasant Point Tribe of Maine, the Passamaquoddy Indian Township of Maine, the Houlton Band of Maliseets of Maine, the Tunica-Biloxi Tribe of Louisiana, the Poarch Band of Creeks of Alabama, the Mashantucket Pequot Tribe of Connecticut, the Narragansett Indian Tribe of Rhode Island, the Wampanoag/Gay Head Tribe of Massachusetts, the Alabama-Coushatta Tribe of

Texas, the Oneida Nation of New York, the Aroostook Band of Mizmac Indians of Maine, and the Catawba Nation of South Carolina.

As you know, USET and its member tribes have been in favor of streamlining and improving the Indian bureaucracies for years. We believe the BIA Reorganization Act of 1995 (S. 814) is a strong first step toward accomplishing this. The bill reflects some—although not all—of the recommendations of the Joint Tribal/BIA/DOI Reorganization Task Force whose participants included three members of USET tribes: James Sappier of Penobscot Nation of Maine, James Billie of the Seminole Tribe of Florida, and Philip Martin of the Mississippi Band of Choctaws. The Joint Task Force put in 4 years of hard work and we are pleased that this legislation attempts to implement some of their proposals which we believe promote tribal interests in the reorganization process. We are especially pleased that S. 814 makes an effort to work within the government-to-government relationship between the Federal Government and Indian Country.

USET enthusiastically supports the legislation's emphasis on organizational reform. The bill provides that the Interior Department must work with the tribes to prepare a reorganization plan for BIA Area Offices that serve them. After a plan has been developed, the Interior Department must then receive the approval of the majority of tribes in the Area prior to entering into a reorganization compact. USET has long sought direct influence on matters of staffing, function, and administration. S. 814 would allow tribes in the Eastern Area to have substantial input into changes made in the operations and function of the BIA's Eastern Area Office (EAO) which serves all 21 USET member tribes.

Input into the future of the EAO is something USET tribes are desperately seeking. The BIA is currently altering the structure of the EAO. USET tribes do not want to be kept in the dark during this reorganization process. We have a strong desire to play a role in shaping the Eastern Area Office of the future.

To our dismay, USET was recently informed that the BIA is undergoing a Reduction-in-Force (RIF) in its Washington headquarters office, referred to as the Central Office. We were informed that EAO employees, located in Arlington, Virginia, will be included in the Central Office RIF. This proposed reduction is a gross injustice to USET tribes. Of the BIA's 12 Areas, the Eastern Area is the only one to be combined with the Central Office in this RIF.

The EAO is being unfairly singled out for a reduction in services and funds available to USET tribes for P.L. 638 contracting. This reduction in funding will leave many tribal 4 projects unfinished. In addition, the RIF will be a sharp blow to the EAO's ability to remain an independent area office. USET tribes fear that the trust responsibility between the BIA and the tribes is disintegrating. We hope that enactment of S. 814 will halt this RIF as a result of the provision which mandates that unless the majority of tribes in an Area enter into an Area office reorganization compact, the existing organizational structure relating to that Area shall remain in effect.

USET favors downsizing of the BIA in an effort to streamline, but not at the expense of its obligations and duty to the tribes. We believe the RIF is the wrong approach. USET has been pursuing two goals involving the administration of the EAO which we believe will save money and improve the cost benefit for the Federal Government and tribes. First, at our Board of Directors meeting in early June, USET passed a resolution calling for the BIA and IHS Area Offices to begin an open dialog to objectively review the advantages and disadvantages of combining the Area Offices of the BIA and IHS and locating the unified office in Nashville, Tennessee. This unified location would be less expensive to operate than the current EAO in the Washington Metro Area and will be closer to the tribes the agencies serve.

Second, as the Committee may be aware, USET is also actively engaged in consultation with the Eastern Area Office staff regarding our notice of intent to contract for the operation of the entire Area Office. In addition, since last April we have conducted many meetings with the Area Office staff on developing a Tribal Shares plan and reorganization plan. We are wary, however, that the EAO RIF will have a negative impact on our goal to contract for the EAO. We have a working relationship with the current EAO staff and to restart negotiations from square one with an altered staff would squander much time, money, and effort. Also, the RIF begs the question that after enduring one staffing reduction, will the "new" Area Office staff fabricate impediments to stop USET's plan to contract the Area Office?

Besides its organizational reform measures, USET supports S. 814's budgetary reform provisions. Historically, the Federal Government has allocated funds for its Indian programs without sufficient tribal input into the process. As a result, many BIA and IHS programs have been significantly underfunded, contributing to the below-average economic and health conditions pervading Indian Country. S. 814 mandates that the Interior Department and Health and Human Services Depart-



ment provide information to Indian tribes concerning the development of BIA and IHS budget requests, respectively, and to ensure that tribes are heavily involved in the development of the budget requests for the two agencies. It allows tribes the opportunity to establish individual tribal funding priorities. We believe these budgetary reform measures will benefit USET's member tribes. The purpose of the BIA is to work with Indian tribes and we believe consultation on budget matters

Finally, USET supports S. 814's regulatory reform efforts. In the current political climate in Washington where the Congress has a desire to reduce government control and lessen regulatory burdens, we believe the BIA Manual is an apt starting point. We believe S. 814's call for the Interior Secretary to conduct a thorough review of the BIA Manual to determine which regulations are necessary, and to weed out extraneous ones, is a long time in coming. USET tribes believe the BIA Manual is outdated and more of a hindrance than a help. In addition, its massive size makes it nearly impossible to obtain complete editions. We believe tribes could benefit from an updated Manual of manageable size developed with full tribal consultation.

Besides providing a framework for a leaner BIA Manual, USET supports S. 814's call for a Joint Tribal-Federal Task Force to review the regulations under Title 25 of the Code of Federal Regulations. We believe these regulations often place an unnecessary burden on tribes and inhibit our development.

Mr Chairman, once again, thank you for allowing me to submit my written testimony on behalf of USET. Overall, we believe S. 814 is a positive initial step toward your expressed goal of bringing substantive reform to the BIA. The bill provides a skeleton from which to work and USET is committed to working with the Committee to complete the process. There is no reason why Congress, the BIA, and the tribes cannot craft consensus legislation that will allow the BIA to become a partner with the tribes in bringing economic and social improvement throughout Indian Country.

---

LOWER ELWHA TRIBAL COUNCIL,  
Port Angeles, WA, May 31, 1995.

Hon. John McCain,  
U.S. Senate.

Dear Mr. Chairman: Please accept this letter as testimony in support of S. 814, the "Bureau of Indian Affairs Reorganization Act of 1995." As you are well aware, Mr. Chairman, I have previously written to you on this subject, on behalf of the Lower Elwha SKlallam Tribe. As I have stated before, any reorganization of the BIA must:

- move all possible program authority and funding out to the Tribal location
- decentralize decisionmaking authority out to the farthest reaches: i.e., Tribes
- define the residual, inherent Federal role—to be carried out by the Secretary of Interior in fulfillment of the Trust protection responsibility of the United States, and
- continue the Tribal consultation process as reorganization is implemented in accordance with the recommendations of the Joint Tribal/BIA/DOI Task Force

I would also like to add what I have mentioned before: that we support the Portland Area Plan as developed jointly by the Tribes and the Portland Area Director and his staff. We are pleased to see that it is emphasized in S. 814, especially since we believe it is a model of Tribal Federal cooperation in a genuine effort to strengthen services to, and the sovereignty of, Indian Tribes. I remain

Cordially yours,

FRANCES G. CHARLES, *Chairwoman.*

STATEMENT OF TADD M. JOHNSON  
EXECUTIVE DIRECTOR AND COUNSEL  
BOIS FORTE RESERVATION TRIBAL COUNCIL  
NETT LAKE, MINNESOTA

June 28, 1995

Mr Chairman, Members of the Committee, I am honored to be here today representing the Bois Forte Band of Chippewa and presenting views on S. 814, the "Bureau of Indian Affairs Reorganization Act of 1995".

The Bois Forte Band of Chippewa is in Northern Minnesota and has a membership of about 2600 members. The Band signed treaties with the United States in 1854 and 1866. The Band is one of the six constituent Bands of the Minnesota Chippewa Tribe which was organized under the Indian Reorganization Act.

I am the Executive Director and Counsel for the Bois Forte Reservation Tribal Council and I am an enrolled member of the Band. Prior to this position, I served as Staff Director and Counsel to the United States House Subcommittee on Native American Affairs under Chairman Bill Richardson. I also served as the Counsel on Indian Affairs to the U. S. House Committee on Interior and Insular Affairs under Chairman George Miller, and I served as Deputy Counsel under Chairman Morris K. Udall. Prior to my staff work in the House, I worked for several years as the Solicitor General to the Mille Lacs Band of Ojibwe.

Over the years, I have witnessed a great many discussions, task forces, meetings and hearings on the problems of the Bureau of Indian Affairs. To my knowledge, S. 814 is the first legislative attempt in recent years to deal with the problems of the BIA in a comprehensive, bold and tribal inclusive manner. On behalf of the Bois Forte Band of Chippewa Indians, I am very pleased to support the principle elements of this legislation.

In addition to being an attorney, I am also a student of history and believe that it is important to analyze every problem in its historical context. This is particularly true in the arena of Indian Affairs. In that regard, I believe it is important to analyze the Bureau in its historical context in order to gain the best understanding of how it should be reorganized.

The history of Federal Indian policy is well-known and well documented. It is a story fraught with policy shifts, fraud, misappropriation of funds, abuse, and the loss of lands and resources. The Bureau of Indian Affairs was the obvious culprit for misdeeds against Indian tribes. For many reasons, the Bureau deserves criticism. However, the antiquated system still utilized

in much of the country, wherein federal bureaucrats carry out most of the tasks on reservations, still exists because some tribes are reluctant to change.

The Constitutional status of Indians was solidified by the famous "Marshall Trilogy" of Indian cases. Chief Justice John Marshall set forth the three fundamental tenets of Indian law: (1) The Congress has plenary power over tribes and the Federal government is to regulate Indian affairs; (2) The states are excluded from the Federal-Tribal relationship, and; (3) Indian tribes retain all sovereignty not expressly taken away from them by the Congress.

During the first decades after the Constitution, there was not an official governmental entity to deal with Indian affairs. The office of Superintendent of Indian Trade was established within the War Department on April 21, 1806. This office existed until March 11, 1824, when Secretary of War John C. Calhoun, by his own order and without authorization from the Congress, established the "Bureau of Indian Affairs" within the War Department. The "Bureau" consisted of Thomas L. McKenney, who had been with the Office of Indian Trade since 1816, and two clerks. The duties of the Bureau were to deal with annuities, examine vouchers for expenditures, administer the fund for the civilization of the Indians, decide on claims between Indians and non-Indians arising from the intercourse acts and deal with Indian correspondence.

In the Act of July 9, 1832, Congress first authorized the post of Commissioner of Indian Affairs, but it was the Act of June 30, 1834 which clarified the organization and functions of the Indian Department. The House Committee commented at the time:

"The present organization of this Department is of doubtful origin and authority, its administration is expensive, inefficient, and irresponsible." (Cohen, p.117)

Portions of the 1834 Act sought to guarantee tribal rights which had not been carried out by administrative action. Further, the Act encouraged Indian tribes to assume a greater responsibility in the administration of the Indian service. Annuity payments were to be made to Chiefs, the Committee explained:

"In the course of their investigations, the Committee have become satisfied that, much injustice has been done to the Indians in the payment of their annuities. The payments are required, by the terms of the treaties, to be paid to the tribe as a political body capable

of acting as its own nation; and it would seem, as a necessary consequence, that the payments should be made to the constituted authorities of the tribe.... The payment to the Chiefs is a mode simple and certain, and, the only mode that will render the annuities beneficial to the tribe, by enabling it to apply them to the expenses of their government, to the purpose of education, or to some subject of general concern..." (Cohen, pg. 118)

One fascinating provision from the Act of June 30, 1834 remains on the books today.

"Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe." (25 USC s.48)

[This provision, which lay dormant for many years, has been utilized recently by the Red Lake Band of Chippewa in Minnesota and the Zuni Pueblo of New Mexico to take over the position of Agency Superintendent at the BIA Agency Office on each reservation. The antiquated law was a precursor to Self-Determination and Self-Governance by 140 years.]

The Act of March 3, 1849, established the Department of the Interior and transferred the Commissioner of Indian Affairs from the War Department to the newly created entity which would deal primarily with public lands.

Treaties continued to be made with Indian tribes until 1871 when, in an appropriation bill, the House decided to end the Senate monopoly on Indian Affairs, which the Senate had with its treaty ratification powers. Although treaty-making ended, the sovereign status of the Indian nations remained. In 1887, the Congress attempted to make the Indians farmers under the General Allotment Act. The Act was a dismal failure and Indian tribes lost over 93 million acres of land during the Allotment Period.

The Snyder Act of November 2, 1921, provided a blanket authorization for the Bureau of Indian Affairs under the Secretary of the Interior to expend congressional appropriations for most activities on reservations, including health, education, employment, real estate administration and irrigation. This authorization was later expanded to be even broader. The impetus behind passage of the Snyder Act was a growing frustration felt by supporters of Indian funding with the continued failure within

the Congress to appropriate sufficient funding for Indian programs. Appropriations requests made by the House Committee on Indian Affairs were often killed on the floor of the House of Representatives by way of point-of-order objections. The Snyder Act was designed to allow Indian appropriations for BIA programs to pass through the House of Representatives without the problem of a lack of authorizing legislation.

The 1928 Meriam Report outlined the failures of the allotment policy. The report described "poverty, disease, suffering, and discontent" among Indians, and while it ultimately recommended assimilation, it criticized the inefficient administration of an Indian policy that did not encourage self-sufficiency. In 1933, John Collier was appointed Commissioner of Indian Affairs by President Franklin Roosevelt. Collier supported the consolidation of tribal land, day schools rather than boarding schools, preservation of Indian heritage and, significantly, the revival of tribalism. Writing in 1947, after his eleven years as Commissioner had concluded, Collier stated his principles as follows:

"First, Indian societies must and can be discovered in their continuing existence or regenerated, or set into being de novo and made use of....

Second, the Indian societies, whether ancient, regenerated or created anew, must be given status, responsibility, and power.

Third, the land, held, used and cherished in the way the particular Indian group desires, is fundamental in any lifesaving program.

Fourth, each and all of the freedoms should be extend to Indians, and in the most convincing and dramatic manner possible...

Fifth, the grant of freedom must be more, however, than a remission of enslavements. Free for what? Organization is necessary to freedom: help toward organizing must be extended by the government...

And now, the sixth principle: The experience of responsible democracy, is, of all experiences, the most therapeutic, the most disciplinary, the most dynamogenic and the most productive of efficiency. In this one affirmation we, the workers who knew so

well the diversity of the Indian situation and its incalcitrancy toward monistic programs, were prepared to be unreserved, absolute, even at the risk of blunders and of turmoil. We tried to extend to the tribes a self-governing self-determination without any limit beyond the need to advance by stages to the goal. Congress let us go only part way. but the part way, when administrative will was undeviating, proved to be enough. Often the administrative will was not undeviating, often the administrative resourcefulness was not enough, often the Gulliver's threads of the land allotment system and of civil service and the appropriation systems kept the administrator imprisoned. The establishment of living democracy, profound democracy, is a high art; it is the ultimate challenge to the administrator. The Indian Service since 1933 has practiced the art, has met the challenge, in ways varied enough and amid situations diversified enough to enable one to give a verdict which seems genuinely momentous: the democratic way has been proved to be enormously the efficient way, the genius-releasing and the nutritive and life-impelling way, and the way of order. (emphasis added).

The seventh principle I would call the first and the last: That research and then more research is essential to the program, that in the ethnic field research can be made a tool of action essential to all the other tools, indeed, that it ought to be the master tool..." (154-156 Collier)

Much of Collier's vision became law in 1934 with the passage of the Wheeler-Howard Act, or the Indian Reorganization Act. The IRA changed the status of land on the reservation. Rather than allowing for allotted land to be sold, Indian land went into a perpetual trust status. The BIA maintained its trustee role and the BIA began to grow from a few Indian agents to a large scale bureaucracy. Under the Indian Reorganization Act, Indian tribes could organize and adopt a constitution under Section 16. This Section provided a congressional blessing on tribal self-government:

"In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal

council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress." (Act of June 18, 1934, Section 16.)

During the 1950's, Congress terminated 120 Indian tribes. This shift in policy damaged all of the tribes that were terminated. Today almost all have been restored to Federal recognition.

Scholars point to the mid-1960's as the beginning of the era of "Self-Determination" for Indian tribes. Many "Great Society" programs were implemented on reservations. Economic opportunity began for many tribes as Federal dollars were pumped in. However, many tribes felt only a temporary boost from the Great Society programs. Although federal money became more available, some reservations went from being run by the BIA to being run by their Community Action Program coordinators.

President Richard Nixon was eventually successful in establishing true Self-Determination for Indian tribes. In his famous 1970 address on Indian affairs, Nixon repudiated the policy of termination. The Nixon Administration drafted the original bill on Indian Self-Determination. In its time it was a bold new experiment. Most of us in this room today know very well the rest of the Self-Determination story, as well as its most recent evolution into the Self-Governance Act last year.

In summary, the problems of the BIA go back 170 years and will not be solved overnight. However, S.814 provides the framework to reform the BIA and its longstanding problems.

It is my view that any reorganization of the BIA must involve certain principles:

(1) **Sovereignty.** S.814 protects the sovereignty of tribes by involving them in the process of reorganization. There is a unique legal and administrative history between the United States and the Indian tribes with regard to the BIA. As under the 1834 Act cited above, as well as the Self-Determination and Self-

Governance Acts, Indian tribes have always played an atypical role in the shaping of the BIA. Underlying the tribal role is the sovereignty of tribes which gives them unique constitutional status.

(2) **Trust Responsibility.** Out of the Marshall Trilogy came the concept that the United States is the "guardian" and the Indians are the "wards". This evolved into a legal trust relationship through treaties, statutes and the course of dealing. Of paramount importance to all tribes is that the trust is retained and the promises of the United States continue to be fulfilled. Although Section 110 provides that "nothing in the Act may be construed to alter or diminish the trust responsibility", there is a widespread concern in Indian country that S.814 might diminish the trust responsibility after implementation. The Committee might consider that this Section could be further strengthened to allay these fears.

(3) **Tribalizing Dollars.** Under Section 109 of the bill, all Reinventing Government, National Performance Review, or other downsizing efforts are suspended. It is my view that this is a good provision because the BIA is a unique agency. While services from other federal agencies can be taken over by states or local units of government which have an independent tax base, most Indian tribes do not have an independent tax base. Hence, unlike other Federal agencies, the constituents of the BIA have no where to go for funding other than the Federal government. While for many years tribes have taken over various ministerial functions of the BIA, they cannot take over the function of funding the services provided either by the Bureau or through tribal contract/compact, nor should they.

The flaw in the NPR and other downsizing programs of the federal government, is that these take a "cookie-cutter" approach and do not take into account the unique history of the BIA. Under NPR the BIA would be downsized and the savings returned to the Treasury. Such an action ignores the federal trust responsibility to the tribes. A better approach would provide that the BIA downsize but the savings be passed on to the Indian tribes, allowing them to perform the ministerial functions of the federal government on the reservations.

(4) **Central Focus.** As mentioned above, Section 109 suspends other downsizing activities at the BIA while requiring agency, area and central office to reorganize simultaneously. This will end the haphazard, ad hoc method of downsizing which has been recently occurring. S.814 forces the BIA at all levels to examine itself and determine, along with tribes, when and where functions are best performed. This implementation of the Joint Tribal BIA/DOI Reorganization Task Force Recommendations needs this central focus in order to be properly implemented.



(5) **Legal Analysis.** A thorough legal analysis by tribes and the Solicitor for the Interior Department will be necessary to implement the reorganization. An assessment of the meaning of "inherent federal function" and the amounts of residuals to be retained by the BIA need to be determined. Such an analysis will be helpful to tribes engaged in Self-Governance as well as other tribes seeking their tribal shares under S.814. As a starting point, I would recommend that the Committee review work submitted by IHS Self-Governance tribes working with the Tribal Methodologies Work Group. While their work was never given its due by the IHS, I believe that this work would provide an excellent and fair starting point for assessing the meaning of "inherent federal functions".

(6) **Trust Protection.** Many tribes are fearful that when the legal analysis discussed above is completed, the federal government will then only fund inherently federal functions. Tribes need an assurance in S.814 that all ministerial functions on the reservations will continue to be protected. In other words, simply because there is a reorganization going on, it doesn't mean that services will have to be cut on reservations. Indeed, some assurance from the Committee in the other direction -- that services will be enhanced under this legislation -- would be well received. Perhaps some language protecting the base funding of tribes might be added to the bill.

(7) **Equity.** For many years, tribes throughout the United States, particularly in the Sacramento and Minneapolis Areas, have pointed out that some study with regard to equity needs to be completed. Or, existing studies which have been completed by the BIA need to be released to Indian tribes. While there is language in Section 503 requiring a report on the budget needs, a specific study of the allocation of funding to area offices should be performed by either the Inspector General or the General Accounting Office.

(8) **Time-frame.** A deadline should be placed within the bill under which the reorganization should be completed. Since there is a suspension of downsizing activities for 24 months after enactment, this would be a logical time-frame to complete the reorganization. While the Department of the Interior will no doubt balk at this time-line, it is critical that there be absolute deadlines which the Department must meet in order to provide the tribes with leverage in negotiations.

(9) **Self-Governance and Self-Determination.** A provision should be added to the legislation making it clear that nothing in the Act is to impair existing or prospective Self-Determination contracts or Self-Governance compacts. There is a fear among both Self-Governance tribes and 638 contractors that the Department could use Section 109 of this Act against them, claiming that these Acts represent downsizing activities and

should therefore be suspended. An exemption or clarifying provision should be added.

In addition, for tribes which do not go along with the majority in obtaining shares of the agency, area or central office budget, provisions should be added to allow them to negotiate shares under either Self-Determination contracts or Self-Governance agreements.

(10) BIA Manual. Title III requires the Secretary to conduct a review of the BIA Manual and requires the Secretary to publish necessary provisions and revoke unnecessary provisions of the Manual. It should be noted that for many years the Manual has been used to make decisions in the BIA affecting tribes in many important ways. However, in spite of the importance of these regulations, tribes have never had access to the Manual. In essence, Title III requires the Secretary to come out of the closet with the Manual and "put up or shut up". We support this provision.

S.814 should be enacted because Indian tribes should not have to enter into the next millennium under many of the paternalistic policies that have existed in the BIA for 170 years. This bill will allow tribes to reshape their own future and further the principles of Self-Determination and Self-Governance. In short, this bill allows tribe to finally reinvent the BIA, and this reinvention can only be an improvement.

I thank the Committee for this opportunity to express my views as well as the views of the Bois Forte Band with regard to this legislation. I would be pleased to answer any questions at this time.

Testimony of the Colorado River Indian Tribes  
 Before the  
 Senate Indian Affairs Committee  
 Hearing on S. 814 "BIA Reorganization"  
 June 28, 1995 at 9:30 a.m.

I AM HERMAN LAFFOON, A MEMBER OF THE TRIBAL COUNCIL OF THE COLORADO RIVER INDIAN TRIBES AND A PROUD VETERAN OF THE UNITED STATES MILITARY. THANK YOU FOR PROVIDING US WITH THE OPPORTUNITY TO ADDRESS THIS VERY IMPORTANT TOPIC. ALSO PRESENT FOR TODAY'S HEARING ARE SEVERAL OTHER MEMBERS OF THE TRIBAL COUNCIL, INCLUDING TRIBAL COUNCIL SECRETARY LAWANDA LAFFOON, MS. CINDY HOMER, AND MR. CONNER BYESTEWA, WHO IS A MEMBER OF THE COUNCIL AND WHO RUNS THE TRIBES' ENVIRONMENTAL PROGRAM.

I WISH TO BEGIN BY POINTING OUT THAT THE TRIBES ARE IN STRONG AGREEMENT WITH THE OBJECTIVES OF S. 814.

FIRST, WE AGREE THAT ALL SAVINGS THAT RESULT FROM BIA RESTRUCTURING OR DOWNSIZING SHOULD BE PROVIDED TO INDIAN TRIBES.

SECOND, WE AGREE THAT AUTHORITY SHOULD BE DELEGATED TO THE LOCAL LEVEL AND THAT THE LOCAL AGENCY OR FIELD OFFICE SHOULD BE ACCOUNTABLE TO THE TRIBE OR TRIBES IT SERVES.

THIRD, WE BELIEVE THAT BIA RESTRUCTURING SHOULD BE GUIDED AND DIRECTED BY THE TRIBES THAT RECEIVE SERVICES.

COLORADO RIVER AGENCY RESTRUCTURING

I AM HERE SPECIFICALLY TODAY TO EXPLAIN OUR EXPERIENCES RESULTING FROM THE BIA'S FAILURE TO ADEQUATELY CONSULT WITH THE TRIBES AND INTEGRATE OUR CONCERNS AND VIEWS IN ITS RESTRUCTURING OF THE COLORADO RIVER AGENCY.

IN APRIL OF 1994, THE TRIBES WERE INFORMED THAT THE AGENCY INTENDED TO RESTRUCTURE SOME OF ITS OPERATIONS.

MOST OF THE PROPOSED CHANGES CONCERNED THE AGENCY POWER SECTION AND

IRRIGATION SECTION. THE BIA OPERATES AN ELECTRICAL UTILITY SYSTEM AND AN IRRIGATION PROJECT ON THE RESERVATION. BOTH OF THESE PROJECTS ARE FUNDED BY USER FEES AND OPERATE SOLELY ON OUR RESERVATION.

DURING A JULY OF 1994 MEETING WITH THE AGENCY SUPERINTENDENT, MANY TRIBAL COUNCIL MEMBERS EXPRESSED GRAVE CONCERNS WITH THE PROPOSED RESTRUCTURING. IN PARTICULAR, CONCERN WAS EXPRESSED THAT THE DECREASE IN STAFF FOR THE POWER SECTION COULD EASILY RESULT IN SEVERE AND EXTENDED POWER OUTAGES.

THE TRIBAL COUNCIL WAS SO CONCERNED WITH THE PROPOSED RESTRUCTURING, THAT WE IMMEDIATELY WROTE DIRECTLY TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS TO INFORM HER THAT THE AGENCY HAD SIMPLY ESTABLISHED A PLAN FOR RESTRUCTURING AND THAT IT WAS UNWILLING TO CONSIDER OR INTEGRATE OUR CONCERNS INTO ITS PLAN.

WE DID NOT RECEIVE A RESPONSE TO OUR AUGUST 12, 1994 LETTER TO THE ASSISTANT SECRETARY UNTIL THE LAST WEEK OF NOVEMBER. SHE RESPONDED TO OUR CONCERNS BY INFORMING THE TRIBES THAT WE SHOULD BE IN CONTACT WITH OUR AREA OFFICE TO ADDRESS OUR CONCERNS!

IN RESPONSE TO OUR POSITION THAT THE PLAN WAS SHORTSIGHTED AND WOULD NOT SAVE MONEY, WE WERE INFORMED THAT THE PLAN WAS CONSISTENT WITH THE NATIONAL PERFORMANCE REVIEW AND THAT IT WAS IMPOSSIBLE TO FIGHT FEDERALLY MANDATED PRESSURES TO DOWNSIZE THE FEDERAL GOVERNMENT.

AT A JANUARY 17, 1995 MEETING WITH OTHER TRIBAL LEADERS, OUR TRIBAL CHAIRMAN WAS INFORMED THAT BIA STREAMLINING PROPOSALS WERE BEING POSTPONED FOR ONE YEAR. OUR CHAIRMAN ASKED WHETHER THIS WOULD APPLY TO LOCAL, AS WELL AS REGIONAL AND CENTRAL OFFICE STREAMLINING. HE WAS INFORMED THAT IT WOULD. WE WERE LED TO BELIEVE THAT THE RESTRUCTURING OF OUR AGENCY OFFICE WOULD BE POSTPONED ALONG WITH OTHER STREAMLINING PROPOSALS.

WE WERE VERY SURPRISED WHEN IT BECAME OBVIOUS DURING THE NEXT FEW MONTHS THAT THE AGENCY STILL PLANNED TO PROCEED WITH THE REDUCTIONS IN FORCE RELATED TO ITS PLANNED REORGANIZATION.

AT THAT POINT, WE REDOUBLED OUR EFFORTS TO HAVE THE AGENCY RECONSIDER AND POSTPONE ITS SHORTSIGHTED REORGANIZATION PLAN. THEY HAVE NOT LISTENED TO US. INDEED, THE BIA HAS ONLY RESPONDED TO OUR REQUESTS FOR EXPLANATIONS AND INFORMATION WHEN YOUR OFFICE HAS JOINED US IN MAKING THESE REQUESTS. EVEN THESE RESPONSES ARE NOT TIMELY AND WE BELIEVE THEY WERE INTENDED TO ARRIVE TOO LATE, AFTER THE REDUCTIONS IN FORCE WERE ALREADY IN PLACE.

WE ARE AT A LOSS TO SEE ANYTHING IN THIS PROCESS THAT REMOTELY RESEMBLES THE FEDERAL GOVERNMENTS OBLIGATION TO ENGAGE IN A GOVERNMENT-TO-GOVERNMENT DIALOGUE WITH THE TRIBES.

THIS EXAMPLE OF THE BIA'S HEAVY HANDED APPROACH TOWARDS TRIBES DEMONSTRATES THE NEED TO CREATE FRAMEWORKS THAT ENSURE TRIBAL CONTROL OF BIA DECISION-MAKING.

#### SPECIFIC COMMENTS ON S. 814

THE COMMITTEE MEMBERS AND THEIR STAFF HAVE SHOW THEIR WILLINGNESS TO LISTEN TO AND CONSIDER ALL OF OUR VIEWS AND CONCERNS ABOUT THIS BILL. MY COMMENTS WILL ONLY ADDRESS A FEW IMPORTANT HIGHLIGHTS AND WE WILL CONTINUE TO ENGAGE IN A PRODUCTIVE DIALOGUE CONCERNING ALL OF THE BILL'S PROVISIONS.

FOR EXAMPLE, FOR SEVERAL YEARS, THE PHOENIX AREA TRIBES HAVE HAD A FEDERAL BUDGET WORKING GROUP, WHICH HAS GONE UNFUNDED BY THE PHOENIX AREA. AS WRITTEN, TITLE II OF S. 814, WOULD PROVIDE A MECHANISM FOR SUCH SUPPORT.

WE AGREE THAT TRIBES SHOULD CONTROL THE STRUCTURE OF CHANGES IN BIA ORGANIZATION. WE ARE CONCERNED ABOUT THE PACE THAT BIA RESTRUCTURING MIGHT TAKE UNDER S. 814. MOST TRIBES LACK THE RESOURCES TO IMMEDIATELY REVIEW AND

COMPACT REGARDING AGENCY, AREA, AND CENTRAL OFFICE MATTERS AT THE SAME TIME. ALSO, BECAUSE THE BILL ALLOWS TRIBES TO DETERMINE THAT AREA AND CENTRAL OFFICE FUNCTIONS SHOULD OCCUR AT THE AGENCY LEVEL, IT MAKES SENSE TO SEQUENCE THIS PROCESS TO REVIEW AGENCY OFFICE FUNCTIONS FIRST.

RESTRUCTURING OF THE BIA IS NOT, OF COURSE, AN END TO ITSELF. SOME MECHANISMS ALREADY EXIST FOR TRIBES TO ACQUIRE BIA FUNCTIONS AND RESPONSIBILITIES AND OBTAIN SOME OF THE RESOURCES NEEDED TO CARRY OUT THESE FUNCTIONS. WHAT DOES NOT EXIST IS A PROCESS THAT REQUIRES THE BIA TO PROVIDE TRIBES WITH THE INFORMATION NEEDED TO FULLY PARTICIPATE IN PROGRAM AND BUDGET PLANNING AND TO ENSURE THE IMPLEMENTATION OF THE POLICIES AND PROGRAMS ESTABLISHED BY TRIBES.

FOR EXAMPLE, LAST YEAR THE PHOENIX AREA TRIBES PASSED A RESOLUTION CALLING FOR A REVIEW OF ALL PHOENIX AREA OFFICE PROGRAMS AND BUDGETS AT THE BEGINNING OF THE FISCAL YEAR. THE PURPOSE OF THE REVIEW WOULD BE TO ALLOW TRIBAL LEADERS TO PARTICIPATE IN PLANNING FOR FUNDS ACTUALLY RECEIVED BY THE AREA OFFICE, IN ORDER TO JOINTLY ESTABLISH SERVICE PRIORITIES. THERE HAS BEEN NO RESPONSE TO THIS PROPOSAL TO DATE.

WE AGREE THAT ANY MONEY SAVED THROUGH THIS PROCESS SHOULD BE PROVIDED TO TRIBES THAT WILL BE REQUIRED TO FULFILL THESE FUNCTIONS. (THE REQUIREMENTS OF THE P.L. 93-638 AND THE SELF-GOVERNANCE LAW REQUIRES THIS RESULT.) AT THE SAME TIME, WE BELIEVE THAT IN A NUMBER OF INSTANCES, IT WILL BE APPARENT THAT THE FEDERAL TRUST OBLIGATION CAN ONLY BE CARRIED OUT BY THE FEDERAL GOVERNMENT ITSELF. FOR EXAMPLE, NATURAL RESOURCES PROTECTION, NEGOTIATIONS OVER LAND AND WATER RIGHTS, AND AREAS WHERE ECONOMY OF SCALE REQUIRES CENTRALIZATION, THE FEDERAL GOVERNMENT WILL STILL PROVIDE DIRECT SERVICES. TRIBES MAY EVEN REQUEST INCREASES IN THE LEVEL OF FEDERAL PRESENCE AND PARTICIPATION IN THESE

AND OTHER AREAS.

WE ALSO AGREE WITH THE PROVISIONS RELATING TO THE REPEAL OF UNPROMULGATED SECTIONS OF THE BIA MANUAL. JUST AS THE BIA'S PROPOSED SELF-DETERMINATION ACT REGULATIONS WERE INVALIDATED BY THE 1994 AMENDMENTS TO THE ACT, WE AGREE THAT THE BIA SHOULD ONLY BE ABLE TO ENFORCE REGULATIONS THAT HAVE GONE THROUGH THE FORMAL PROCESS OF REVIEW, COMMENT, AND PUBLICATION. THUS, WE APPLAUD THE PROPOSAL TO REQUIRE THE BIA TO EITHER FORMALLY PROMULGATE PROVISIONS OF THE BIA MANUAL OR ALLOW THEM TO LAPSE.

IN THE END THEN, WE ARE NOT SIMPLY TALKING ABOUT THE SHAPE OF THE BIA BUREAUCRACY, PER SE, BUT THE MANNER IN WHICH THE FEDERAL GOVERNMENT CARRIES OUT ITS TRUST OBLIGATION. IN SOME INSTANCES, THIS WILL CONSIST OF TRIBES CARRYING OUT "FEDERAL" OBLIGATIONS UNDER LIMITED FEDERAL OVERSIGHT. IN OTHER INSTANCES, THE FEDERAL GOVERNMENT WILL RETAIN THE RESPONSIBILITY TO PROVIDE DIRECT SERVICES. IN THOSE INSTANCES, THIS BILL MAY PROVIDE A MEANS FOR IMPROVING THE NATURE OF TRIBAL OVERSIGHT OF THE FEDERAL GOVERNMENT, ESPECIALLY IN TERMS OF BUDGETING AND PRIORITIZING.

TESTIMONY  
OF  
WILBUR BETWEEN LODGES  
PRESIDENT, OGLALA SIOUX TRIBE  
CONCERNING  
S. 814  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS



My name is Wilbur Between Lodges, President, Oglala Sioux Tribe of the Pine Ridge Indian Reservation, Pine Ridge, South Dakota.

I wish to take this opportunity to thank you Senator McCain as Chairman of the United States Senate Committee on Indian Affairs for allowing me this opportunity to present testimony to the Committee on S. 814, a Bill to provide for the reorganization of the Bureau of Indian Affairs, and for other purposes.

It is very refreshing to know that a U.S. Senator of your statute is proposing such legislation. Allow me to quote you from your statement published in the Congressional Record dated May 17, 1995:

“It is time to change the way this nation deals with American Indians. It is time to bring an end to the long and dismal history to American Indians. It is time to break down the barriers to true tribal self-governance and self-determination by providing Indian tribes with the authority to design both the structure and function of its trustee, the Bureau of Indian Affairs”.

The Oglala Sioux Tribe agrees wholeheartedly with your statement. This Bill, S. 814, goes a long way in realizing such goals. However, we must emphasize that the United States Government, not the Bureau of Indian Affairs, is the trustee of the Oglala Sioux Tribe.

The many regulations adopted for the administration of Bureau of Indian Affairs programs are serious impediments to successful tribal administration of programs contracted by the tribes pursuant to P.L. 93-638, as well as other Bureau of Indian Affairs programs, including Bureau of Indian Affairs administration of such programs. We recommend a complete review of all such regulations in order to

identity those regulations that impede successful tribal administration of P.L. 93-638 contracts and grants. Further, we need to identify those Bureau of Indian Affairs regulations that impede timely delivery of Bureau of Indian Affairs services to the target populations. Once identified, such regulations should be abolished. If the abolishment of these regulations cannot be timely accomplished, we recommend that tribal governments be authorized a waiver of such regulations in order to allow an efficient successful administration of such contracts or grants. The request for a waiver of various Bureau of Indian Affairs regulations as they are identified as impeding and interfering with efficient program administration applies to Bureau of Indian Affairs education, specifically those regulations set forth at 25 CFR 271.14, 11.2.

At the present time each Bureau of Indian Affairs contract or grant has a very strict scope of contract requirements as set forth in the Part 100 of each respective P.L. 93-638 contract. It is our opinion that such "boxing" of services creates unnecessary overlapping of contract administration services. The strict reliance on Part 100 requirements results in an unnecessary encumbrance of program administration time with a resultant loss of efficient program administration. A more liberal administration of contract requirements may allow program staff to provide services to more than one program resulting in more efficient program administration.

The Oglala Sioux Tribe is appreciative of your efforts to provide for a meaningful consultation process regarding Bureau of Indian Affairs reorganization. We are attaching documents already presented to the Bureau of Indian Affairs regarding the tribe's position in reference to their proposed reorganization.

However, as the largest tribe in the Aberdeen Area we are concerned with the language in S. 814 that requires a majority of Indian tribes to approve the Area Office plan by resolution pursuant to the applicable procedures established by the Indian tribes. We have experienced this process while a member of the United Sioux Tribes organization. A majority of the tribes in the Aberdeen Area, could, pursuant to the legislation, adopt a plan we do not agree with.

This, despite the fact that our membership and land base far exceed the membership and land base of a combination of those tribes constituting a majority.

The Bureau of Indian Affairs is already planning a Tribal Shares program that is based upon a suspect formula. However, the Oglala Sioux Tribe is in favor of receiving funds directly from the Area Office appropriation, although the residual funds to be retained by the Secretary for the Area Office and Area Office responsibility must be subject to tribal consultation and negotiation.

The Oglala Sioux Tribe fully supports the delegation of authority and functions from the area level to the agency level. However, such delegation of authority and functions shall be subject to full tribal consultation and negotiation. The Oglala Sioux Tribal Council has previously taken action to abolish the Aberdeen Area Office, and transfer of such authorities and functions to the Agency would effectively accomplish that action.

The Oglala Sioux Tribe has a concern that the amendment to the Indian Self-Determination Act, Title V - Budget Development, does not result in an open competition among all federally recognized Indian Tribes for the budget appropriation.

The Oglala Sioux Tribe expresses its appreciation of your efforts to reorganize the Bureau of Indian Affairs in order to decentralize the decision making authority of the Bureau of Indian Affairs; reduce regulatory requirements of the Bureau of Indian Affairs; reform Bureau of Indian Affairs regulatory impediments to Indian education; and reform the current Bureau of Indian Affairs budgetary process.

In closing, the Oglala Sioux Tribe reminds the U.S. Government that the Oglala Sioux Tribe did enter into various treaties with the United States of America. We again take this opportunity to request the USA to honor the provisions of those treaties.

We would also request that the Committee grant to the Oglala Sioux Tribe additional time in which to submit for the record additional testimony or exhibits.

Thank you again Mr. Chairman.

RESOLUTION NO. 95-15

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL  
OF THE OGLALA SIOUX TRIBE  
(An Unincorporated Tribe)

RESOLUTION OF THE OGLALA SIOUX TRIBAL COUNCIL DEMANDING THE ESTABLISHMENT OF A DEPARTMENT OF INDIAN AFFAIRS IN CONSULTATION WITH ALL INDIAN TRIBES AND OPPOSING BIA STREAMLINING EFFORTS AS PRESENTED TO THE TRIBES WITHOUT A MEANINGFUL CONSULTATION PROCESS.

WHEREAS, Vice-President Gore and the National Performance Review (NPR) released a report entitled, "From Red Tape to Results: Creating A Government That Works Better and Costs Less" on September 7, 1993, and

WHEREAS, the report addressed the need to reduce the Federal Work-Force by 252,000 employees between FY-1994 and FY-1999, and

WHEREAS, the NPR streamlining options available to the Bureau of Indian Affairs (BIA) under the constraints of the Administration's mandate to reduce, restructure and reinvent the Federal Government were presented to the Aberdeen Area Tribes at a consultation meeting in Aberdeen, SD on January 25, 1995, and

WHEREAS, the Aberdeen Area Tribal Nations did reject, by resolution, the proposed restructuring, the consultation process, and called for an unfunded mandate study, which was adopted by the Aberdeen Area Tribal Chairpersons at a specially called meeting on January 25, 1995 (Resolution attached hereto as Exhibit A and incorporated by reference herein), and

WHEREAS, the Aberdeen Area Tribal Chairperson did adopt their official "Statement Regarding the Treaty and Trust Obligations of the United States and Proposed Budget Cuts to the Bureau of Indian Affairs" on February 4, 1995 (Statement attached hereto as Exhibit B and incorporated by reference herein), and

WHEREAS, there exists an Unmet Need of \$208,397,308.00 on the Pine Ridge Indian Reservation that the "Savings" realized from the downsizing or rightsizing of the BIA for which such funds can be utilized (Schedule of Unmet Needs for the Oglala Sioux Tribe attached hereto as Exhibit C and incorporated by reference herein), and

WHEREAS, President Clinton did issue a Memorandum for the Heads of Executive Departments and Agencies in the "Government-to-Government Relations with Native American Tribal Governments" (Memorandum attached hereto as Exhibit D and incorporated by reference herein), and

RESOLUTION NO. 95-15

Page Two

WHEREAS, President Clinton did sign Executive Order No. 12875, "Enhancing the Intergovernmental Partnership", on October 26, 1993 (Executive Order attached hereto as Exhibit E and incorporated by reference herein), and

WHEREAS, President Clinton did sign Executive Order No. 12866, "Regulatory Planning and Review", on September 30, 1993 (Executive Order attached hereto as Exhibit F and incorporated by reference herein), and

WHEREAS, the Oglala Sioux Tribal Council has adopted a "POSITION PAPER, OST, BIA, REORGANIZATION ALTERNATIVES" which was presented by President Wilbur Between Lodges, for and on behalf of the Oglala Sioux Tribe, in Aberdeen, South Dakota on the 25th day of January, 1995 (Position Paper attached hereto as Attachment G and incorporated by reference herein), and

WHEREAS, the Oglala Sioux Tribal Council did demand the abolishment of the Aberdeen Area Office, via Oglala Sioux Tribal Council Resolution No. 83-94, which would have downsized or rightsized the Aberdeen Area Office in 1983, although it was never enforced by the Bureau Indian Affairs, now

THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council does hereby demand the United States Government, in recognition of the special and unique political Government-to-Government relationship between the Oglala Sioux Tribe and the United States of America and based upon the treaty with the Oglala Sioux Tribe, federal statutes, United States Supreme Court case law and the Constitution of the United States, to take the following actions:

- 1) Award a waiver to the BIA and all other appropriate federal entities concerning any across-the-board cuts or any other cuts to BIA and all other appropriate federal entity funding now proposed or which might be proposed in the future.
- 2) Any "downsizing" should be handled in the following manner:
  - a) That if "downsizing" continues to be forced upon the Tribes, the Tribes should be consulted in a meaningful consultation process and that the Oglala Sioux Tribe shall not be treated as another Federal or State governmental program.

RESOLUTION NO. 95-15

Page Three

- b) The Tribes are not opposed to "downsizing", but any downsizing shall be targeted at the central and Area Office levels and any saving realized from the downsizing process shall be channeled back to the Tribes.
- c) A complete line item budget reflecting proposed budget cuts and how and where such savings shall be spent.

and

BE IT FURTHER RESOLVED, that although our Tribes are engaged in casino gaming, the revenue derived from gaming are not a replacement for Federal trust and Treaty responsibilities, and are used by Tribes to only supplement many unmet needs, and

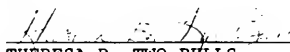
BE IT FURTHER RESOLVED, that the BIA, as currently structured, be abolished and a cabinet level Department of Indian Affairs be established answerable directly to the Indian nations and the President of the United States, and

BE IT FURTHER RESOLVED, that the structure and operation of the new cabinet level Department of Indian Affairs be established with a meaningful consultation process with Indian Tribes, and

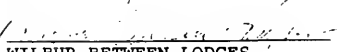
BE IT FURTHER RESOLVED, that the Oglala Sioux Tribe as a sovereign nation with an existing treaty between the United States of America and the Oglala Sioux Tribe does hereby demand that the United States Government honor their Treaty obligations as recognized as the supreme law of their government.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, as undersigned Secretary of the Oglala Sioux Tribal Council, hereby certify that this Resolution was adopted by the vote of: 13 for: 0 against: 0 abstain; 0 not voting, during a SPECIAL SESSION held on the 7th day of FEBRUARY, 1995.

  
 THERESA B. TWO BULLS  
 Secretary  
 Oglala Sioux Tribe

A-T-T-E-S-T

  
 WILBUR BETWEEN LODGES  
 President  
 Oglala Sioux Tribe



# EXHIBIT A

## ABERDEEN AREA TRIBAL NATIONS RESOLUTION REJECTING RESTRUCTURING AND CALL FOR UNFUNDED MANDATE STUDY

WHEREAS, The Aberdeen Area Tribes comprised of 16 Federally Recognized Tribes in North Dakota, South Dakota, and Nebraska, and

WHEREAS, The Aberdeen Area Tribes have met and do find that there is lack of appropriate time and quality in the current process to restructure and downsize the Bureau of Indian Affairs, and

WHEREAS, The options presented by the restructuring committee are inadequate and misrepresentative of the needs of the Aberdeen Area Tribes and their people, and

WHEREAS, The restructuring and downsizing plans would effectively result in loss of funds vitally essential to the health, education, welfare and trust services of the Indian Tribes and their people, and

WHEREAS, The Tribes of the Aberdeen Area have a government-to-government relationship, based upon Federal Treaties and Agreements between each Tribe and the United States of America, and

WHEREAS, The propositions being presented by the Department of the Interior and the consultation process already represent "unfunded mandates," based upon submittal to the United States Government and the U.S. Congress..

NOW THEREFORE BE IT RESOLVED, That the Aberdeen Area of Treaty and Federally Recognized Tribes do hereby reject in its entirety, the proposed Restructuring and Downsizing Plan; and

BE IT FURTHER RESOLVED, That the Aberdeen Area of Tribes does herein propose that each Tribe submit its respective tribal and agency plan to the Secretary of Interior and the U.S. Congress, and

BE IT FURTHER RESOLVED, That upon examination of the proposed downsizing plan, that there are conflicts between this and the Joint Tribal/BIA/DOI Task Force Report on Reorganization and that both reports are herein rejected, and

BE IT FURTHER RESOLVED, That because the restructuring /downsizing option will cause a reduction by not less than 50% in budgets which directly affect the welfare, education and trust services to Tribal governments and their respective populations, that the U.S. Congress is urged to implement, by Law, a major study of the unfunded mandates to Treaty Tribes.

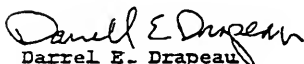
NOW THEREAFTER BE IT RESOLVED, The respective tribal needs of each tribe/agency shall be appropriately submitted and attached as per the recommendation of each tribe regarding their own unfunded mandates

BE IT FURTHER RESOLVED, This Resolution is adopted at a specially called meeting of the Aberdeen Area Tribal Chairman, January 25, 1995, and that such resolution and needs of the tribes be expedited to the Secretary of the Indian and members of the U.S. Congress, and

BE IT FURTHER RESOLVED, That such action was taken at a duly called meeting at which a quorum of 11 tribal representative were present.

CERTIFIED

I herein certify that said resolution was passed by a motion of Russell Bud Mason, Chairman of the Three Affiliated Tribes of Fort Berthold, second by Wilbur Between Lodges, Chair of the Oglala Lakota Nation, and a vote of 10 yes, 0 no, and one not voting, and that said vote constitutes an overwhelming majority, this January 25, 1995.



Darrel E. Drapeau  
Chair  
Aberdeen Area Tribal  
Chairman  
January 25, 1995



# EXHIBIT B

## STATEMENT OF ABERDEEN AREA CHAIRPERSONS REGARDING TREATY AND TRUST OBLIGATIONS OF THE UNITED STATES AND PROPOSED BUDGET CUTS TO THE BUREAU OF INDIAN AFFAIRS

February 4, 1995

The Tribal Chairpersons of the Aberdeen Area have met and discussed the proposals recently presented to them regarding the so-called "streamlining" of the BIA. The Tribes, instead, want to exercise the prerogative of "rightsizing" the bureaucracy of the BIA.

This does not mean we want the BIA to continue business as usual. We do favor a reduced BIA, but one which will provide an even greater level of funding for Tribal programs which will truly benefit our people, the first people of the Western Hemisphere.

The Tribal Chairpersons understand that the United States government has certain fundamental obligations to Indian tribes under the U.S. Constitution, the U.S. Bill of Rights, and various treaties it signed with them which allowed vast tracts of land to be used by non-Indians. These obligations have been recognized most recently in various Executive Orders such as Executive Order No. 12866 and 12875 signed by the President of the United States in 1993 which have insisted upon a true government-to-government relationship and fairness in dealing with Indian Tribes. In addition, the various treaty and trust obligations of the United States are recognized in many Federal statutes upon which Tribes have relied for decades in their continued development. We also know that these obligations have never been fully met by the United States.

As treaty tribes, we believe current attempts to substantially "downsize" or "streamline" the Bureau of Indian Affairs represent a drastic new attempt to undermine the fundamental obligations of the United States towards the various sovereign Indian nations within its borders. Therefore, as these efforts at "reinventing the government" continue, we want to ensure that it is the government of the United States that is being reinvented, not the governments of our separate nations.

We urge the United States government to do the following:

1) Apply a waiver to the BIA concerning any across-the-board cuts to BIA funding now proposed or which might be proposed in the future;

2) (a) That if "downsizing" continues to be forced upon the Tribes, the Tribes should be consulted in a meaningful government-to-government relationship; and

(b) The Tribes are not opposed to "downsizing", but any "savings" realized from the process of "downsizing" must be channeled back to the Tribes.

We must also emphasize that although our tribes are engaged in gaming, the revenues we derive from gaming are not a replacement for Federal trust and treaty responsibilities. Such revenues only supplement our many unmet needs.

Our goal is that the BIA be moved out of the Interior Department. Indian people are not "natural resources" to be managed by an Interior Department. Past relationships with other Cabinet departments have not worked. For a true, effective, government-to-government relationship to exist, a Department of Indian Affairs must be established with Cabinet status, answerable directly to the Indian nations and the President of the United States.

# EXHIBIT C

## OGLALA SIOUX TRIBE BUREAU OF INDIAN AFFAIRS SCHEDULE OF UNMET NEEDS

FEBRUARY 7, 1995

### BIA PROGRAMS:

Aid to Tribal Government	\$ 258,500.00
Social Services	710,900.00
Welfare Assistance Grants	1,735,000.00
Indian Child Welfare Act	250,000.00
Tribal Courts	855,800.00
Special Tribal Courts	250,000.00
Law Enforcement	2,743,700.00
Credit and Finance	2,500,000.00
Financial Trust Services	140,000.00
Economic Development	1,174,600.00
Other - Economic Development	1,400.00
Natural Resources - General	157,000.00
Agriculture	498,500.00
Agriculture - Prairie Dog	972,000.00
Agriculture Extension	17,600.00
Range Rehabilitation	500,000.00
Forest Program Management	21,100.00
Water Management - Planning & Pre-Development	229,000.00
Water Resources	110,000.00
Safety of Dams - Engineering Design	1,000,000.00
Irrigation Operation & Maintenance	105,000.00
Wildlife Management/Development	279,600.00
Parks and Recreation - Rangers	762,193.00
Real Estate Services	556,800.00
Real Estate Services - Lease Compliance	84,000.00
Executive Direction	187,000.00
Administrative Services	377,000.00
Facilities Operation and Maintenance	1,211,000.00
Road Maintenance - Non Education	1,105,000.00
Housing Improvement Program	739,000.00
Hazardous Waste	<u>432,000.00</u>

SUBTOTAL	\$ <u>19,963,693.00</u>
----------	-------------------------

## BIA EDUCATION:

Tribal Education Department	\$ 103,000.00
ISEP	3,022,387.00
Johnson O'Malley Education Assistance	169,000.00
Scholarships	959,200.00
Adult Education	168,200.00
Adult Vocational Training	140,800.00
Employment Assistance	310,300.00
Special Education	1,559,580.00
OGLALA LAKOTA COLLEGE:	
Tribally Controlled Community College	396,600.00
Instructional Division	784,770.00
Community and Student Services	285,371.00
District Centers	214,028.00
Institutional Development	142,686.00

## BIA EDUCATION - OPERATION &amp; MAINTENANCE:

American Horse	56,640.00
Little Wound	205,822.00
Wounded Knee	45,521.00
Loneman	95,517.00
Porcupine	66,303.00
Crazy Horse	150,098.00
Pine Ridge	773,344.00
Oglala Lakota College	500,000.00

## BIA EDUCATION - FACILITIES IMPROVEMENT AND REPAIR:

American Horse	56,640.00
Little Wound	1,515,890.00
Wounded Knee	433,021.00
Loneman	1,246,826.00
Porcupine	588,280.00
Crazy Horse	801,181.00
Pine Ridge	5,699,952.00
Oglala Lakota College	<u>5,000,000.00</u>

SUBTOTAL \$ 25,490,957.00

## BIA CONSTRUCTION PROJECTS:

Solid Waste Management	\$ 942,658.00
Reservation Road & Bridge Construction	30,000,000.00
Safety of Dams - Construction	2,000,000.00
Irrigation Engineering Design & Construction	5,000,000.00
Tribal Facilities/Equip - Expansion/Replacement	10,000,000.00
District Facilities/Equip - Expansion/Replacement	40,000,000.00
Reservation Schools - Expansion/Replacement	50,000,000.00
Oglala Lakota College - Expansion/Replacement	<u>25,000,000.00</u>
 SUBTOTAL	 \$ <u>162,942,658.00</u>

OGLALA SIOUX TRIBE  
EXISTING BIA UNMET NEEDS

## SUMMARY OF SCHEDULE SUBTOTALS:

BIA PROGRAM SUBTOTAL	\$ 19,963,693.00
BIA EDUCATION SUBTOTAL	25,490,957.00
BIA CONSTRUCTION SUBTOTAL	<u>162,942,658.00</u>
 TOTAL UNMET NEEDS - OGLALA SIOUX TRIBE	 \$ <u>208,397,308.00</u>

# # # # #

# EXHIBIT D

## Government-to-Government Relations With Native American Tribal Governments

*Memorandum for the Heads of Executive Departments and Agencies*

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 12866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

*William Clinton*

## EXHIBIT E

EXECUTIVE ORDERS  
No. 12875

Executive Order 12875 of October 26, 1993

## Enhancing the Intergovernmental Partnership

58 F.R. 58093

The Federal Government is charged with protecting the health and safety, as well as promoting other national interests, of the American people. However, the cumulative effect of unfunded Federal mandates has increasingly strained the budgets of State, local, and tribal governments. In addition, the cost, complexity, and delay in applying for and receiving waivers from Federal requirements in appropriate cases have hindered State, local, and tribal governments from tailoring Federal programs to meet the specific or unique needs of their communities. These governments should have more flexibility to design solutions to the problems faced by citizens in this country without excessive micromanagement and unnecessary regulation from the Federal Government.

THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reduce the imposition of unfunded mandates upon State, local, and tribal governments; to streamline the application process for and increase the availability of waivers to State, local, and tribal governments; and to establish regular and meaningful consultation and collaboration with State, local, and tribal governments on Federal matters that significantly or uniquely affect their communities, it is hereby ordered as follows:

**Section 1. *Reduction of Unfunded Mandates.*** (a) To the extent feasible and permitted by law, no executive department or agency ("agency") shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:

(1) funds necessary to pay the direct costs incurred by the State, local, or tribal government in complying with the mandate are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of regulations containing the proposed mandate, provides to the Director of the Office of Management and Budget a description of the extent of the agency's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, any written communications submitted to the agency by such units of government, and the agency's position supporting the need to issue the regulation containing the mandate.

(b) Each agency shall develop an effective process to permit elected officials and other representatives of State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

**Sec. 2. *Increasing Flexibility for State and Local Waivers.*** (a) Each agency shall review its waiver application process and take appropriate steps to streamline that process.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by a State, local, or tribal government for a waiver of statutory or regulatory requirements in connection with any program

## EXECUTIVE ORDERS

No. 12875

administered by that agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the State, local, and tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the fullest extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency. If the application for a waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements of the programs that are discretionary and subject to waiver by the agency.

Sec. 3. *Responsibility for Agency Implementation.* The Chief Operating Officer of each agency shall be responsible for ensuring the implementation of and compliance with this order.

Sec. 4. *Executive Order No. 12866.* This order shall supplement but not supersede the requirements contained in Executive Order No. 12866 ("Regulatory Planning and Review").

Sec. 5. *Scope.* (a) Executive agency means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(b) Independent agencies are requested to comply with the provisions of this order.

Sec. 8. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. *Effective Date.* This order shall be effective 90 days after the date of this order.

William Clinton

THE WHITE HOUSE,  
October 26, 1993.

# EXHIBIT F

## EXECUTIVE ORDERS

No. 12866

Executive Order 12866 of September 30, 1993

### Regulatory Planning and Review

58 F.R. 51735

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *Statement of Regulatory Philosophy and Principles.*** (a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation



is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

## EXECUTIVE ORDERS

No. 12866

Sec. 2. *Organization.* An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the ~~operational~~ <sup>operational</sup> ~~substantive expertise and experience, they are responsible for developing regulations and ensuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.~~

(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be ~~the entity that reviews individual regulations, as provided by this Executive order.~~

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. *Definitions.* For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA; who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

~~Sec. 4. Planning Mechanism.~~ In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) ~~Agencies Policy Meeting.~~ Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

~~(b) Unified Regulatory Agenda.~~ For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). ~~Each agency shall prepare an agenda of all regulations under development for review, at a time and in a manner specified by the Administrator of OIRA. The description~~

## EXECUTIVE ORDERS

No. 12866

of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

~~(c) The Regulatory Plan.~~ For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important/significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(c) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

**Sec. 5. Existing Regulations.** In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations

that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. *Centralized Review of Regulations.* The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

## EXECUTIVE ORDERS

No. 12866

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;



EXECUTIVE ORDERS  
No. 12866

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

**Sec. 7. Resolution of Conflicts.** To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President

## EXECUTIVE ORDERS

No. 12866

include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

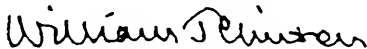
At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

**Sec. 8. Publication.** Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

**Sec. 9. Agency Authority.** Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

**Sec. 10. Judicial Review.** Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 11. Revocations.** Executive Orders Nos. 12291 and 12498;<sup>1</sup> all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE.

September 30, 1993.

1. 5 U.S.C.A. § 601 nt.

# EXHIBIT G

## POSITION PAPER

### OGLALA SIOUX TRIBE

### BIA REORGANIZATION ALTERNATIVES

Aberdeen, South Dakota

January 25, 1995

Presented By

Wilbur Between Lodges

President

For and On Behalf of the

Oglala Sioux Tribe

Pine Ridge Indian Reservation

## TESTIMONY OF WILBUR BETWEEN LODGES

## PRESIDENT - OGLALA SIOUX TRIBE

MOTION #95-08 - MOTION MADE BY GERALD BIG CROW, SECONDED PETE RICHARDS TO DIRECT CHUCK JACOBS, EXECUTIVE DIRECTOR, AND MARVIN AMIOTTE, TRIBAL ATTORNEY, TO DRAFT A POSITION PAPER VEHEMENTLY OPPOSING THE FINAL RECOMMENDATIONS OF THE JOINT TRIBAL/BIA/DOI ADVISORY TASK FORCE AND THE PROPOSED BIA STREAMLINING OPTIONS ON REORGANIZATION OF THE BUREAU OF INDIAN AFFAIRS, AND TO INCLUDE LANGUAGE THAT ADDRESSES THE FOLLOWING:

1) TRUST RELATIONSHIP WITH THE UNITED STATES CONGRESS THAT DIFFERENTIATES THE TRIBES FROM OTHER RECIPIENTS OF FEDERAL FUNDS;

2) THE LANGUAGE OF PRESIDENT CLINTON'S MEMO TO HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES ON THE "GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE AMERICAN TRIBAL GOVERNMENTS";

3) THE INTENT OF VICE-PRESIDENT AL GORE AND THE NATIONAL PERFORMANCE REVIEW (NPR) TO REDUCE THE FEDERAL WORK FORCE BY TARGETING UPPER MANAGEMENT POSITIONS GS-13 THROUGH SENIOR EXECUTIVES FOR REDUCTION VERSUS PASSING THEM THROUGH TO IMPACT THE TRIBES AT THE LOCAL LEVEL (INCLUDE THE PINE RIDGE AGENCY'S REDUCTIONS AND THEIR IMPACT AS AN EXAMPLE);

4) HIGHLIGHT THE DECENTRALIZATION OF AUTHORITY AND FUNDING FROM THE CENTRAL/AREA MANAGEMENT OPERATIONS TO SUBORDINATE AGENCY OPERATIONS, AS MANDATED BY DOI/OMB/NPR AND CONSISTANT WITH THE CURRENT REPUBLICAN CONGRESS' EFFORT TO RETURN POWER TO THE STATES AND LOCAL GOVERNMENTS;

5) THE REFUSAL OF THE OGLALA SIOUX TRIBE TO NEITHER ACCEPT ANY OF THE ALTERNATIVES PROPOSED NOT TO ACCEPT THE PROCESS UTILIZED AS PROFICIENT CONSULTATION, AS MANDATED BY FEDERAL LAW;

6) THE OGLALA SIOUX TRIBAL COUNCIL PASSED A RESOLUTION RECOMMENDING THE ABOLISHMENT OF THE ABERDEEN AREA OFFICE, OST RESOLUTION NO. 83-94, "RESOLUTION FOR THE ABOLISHMENT OF THE ABERDEEN AREA BUREAU OF INDIAN AFFAIRS;

7) ATTACH SENATOR JOHN McCain'S STATEMENT TO THE ARIZONA INDIAN TRIBES ON DECEMBER 8, 1994 FOR EMPHASIS; AND

8) FORWARD THE OGLALA SIOUX TRIBE'S POSITION TO THE SOUTH DAKOTA CONGRESSIONAL DELEGATIONS, THE OFFICE OF MANAGEMENT AND BUDGET, INTERIOR SECRETARY BRUCE BABBIT, AND VICE-PRESIDENT AL GORE AND THE NATIONAL PERFORMANCE REVIEW.

MOTION CARRIED UNANIMOUSLY (13) YES.

## POSITION PAPER

## OGLALA SIOUX TRIBE

It is unfortunate that the Oglala Sioux Tribe must constantly remind the BIA of its trust responsibility to the Oglala Sioux Tribe. Various acts of Congress have identified the BIA as the principal agent of the United States in its dealings with various Indian Tribes. However, as federal courts have stated on many occasions the United States Congress itself is the trustee for Indians. Congress itself is the only federal governmental entity that may define the scope of the federal trusteeship not governmental agencies such as the BIA. However Congressional trust obligations are further defined by treaties, agreements, federal statutes, federal court case law and U.S. Supreme Court decisions.

The unique and complex legal relationship between the United States government and Indian Nations was first established by the landmark U.S. Supreme Court decision of Worcester v. Georgia. This relationship has been recognized by the United States as a "government to government" relationship. The Oglala Sioux Tribe and other tribal governments cannot and should not be treated as another federal program. The proposed budget cuts for the BIA, IHS and all other federal entities dealing with Indian tribes must be restored to previous levels.

On September 7, 1993, Vice-President Al Gore and the National Performance Review (NPR) released a report entitled, "From Red Tape to Results: Creating a government that works better and costs less." This report addressed the need to reduce the federal work-force by 252,000 employees between FY-94/FY99. The targeted group for reductions is upper management positions GS-13 through Senior Executives.

During FY-94/95 the Bureau of Indian Affairs authorized a buyout incentive to its employees which resulted in the reduction of 16 employees at the Pine Ridge Agency none of which were in the targeted group of upper management. In addition to the reduction of employees which was 20% of the Bureau Agency work-force, the Bureau imposed hiring restrictions on the Pine Ridge Agency. These two actions resulted in the loss of 20% of the work-force which is adversely impacting on the delivery of services to the Indian people and the Pine Ridge Indian Reservation.

The Joint BIA/Tribal DOI Task Force recommended that the Bureau decentralize authority to the tribe/agency level. This recommendation is in concert with DOI/OMB/NPR mandate which specifically requests that central management operations be delegated to subordinate Area/Field offices. This recommendation is consistent with the current Republican Administration effort to return power to the States and local governments.

It appears that the Bureau is not adhering to the DOI/OMB/NPR mandates as evidenced by the reduction of staff and the restrictions on hiring at the Pine Ridge Agency. The Oglala Sioux Tribe in accordance with the Federal and Task Force mandate requests the Bureau of Indian Affairs to cease and desist from further reductions of staff at the Pine Ridge Agency and to authorize the FTE's necessary to adequately replace those employees lost through employee buy outs and to lift the hiring restrictions.



Under the guise of the tribal consultation process the BIA is attempting to force BIA Reorganization alternatives upon Indian tribes. This so called streamlining effort has already had an adverse impact on the Pine Ridge Agency. Reorganization materials received by the Oglala Sioux Tribe do not include adequate budget information nor an identification of transfer or assignment of Central Office and/or Area Office authorities to the Agency level.

The purported consultation process is in complete violation of President Clintons "Government to Government Relations With Native American Tribal Governments" memo to Heads of Executive Departments and Agencies. In that Memo President Clinton stated "as executive departments and agencies undertake activities affecting Native American tribal rights or trust resources such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty."

The Oglala Sioux Tribe will not be forced into accepting one of several alternatives presented by the BIA without participating in a true tribal consultation procedure. As of this date we are still receiving information that is critical to the Tribes in assessing the relative merits of a reorganization.

Therefore the Oglala Sioux Tribe must decline the invitation of the BIA to select any of the BIA Reorganization alternatives presented for approval at the January 25, 1995 Aberdeen Area Office meeting due to the failure of the BIA to present full budget reduction information.

In closing the Oglala Sioux Tribe would generally recommend a BIA Reorganization plan that would increase funding of services and personnel at the agency level and also delegate central and area office authorities to the agency levels provided that such acts are consistent with the Treaties and trust responsibilities of the United States Government. The Oglala Sioux Tribe would refer the BIA to the language of the US Supreme Court in the case of "The Seminole Nation v. U.S." The United States is bound to act always in the best interests of Indians and with the utmost good faith towards them. As a fiduciary, the United States must deal with Indians in a spirit of confidence, fairness and trust.

STATEMENT OF SENATOR JOHN McCAIN  
FOR DECEMBER 8th MEETING  
WITH ARIZONA INDIAN TRIBES

On November 8th, the American People sent a message to the Congress and to the Federal government. That message was less government, less regulation, less bureaucracy, and more local control. I believe this is the same message that I have been hearing from Indian tribes throughout my tenure in the Congress.

The time has come to put the BIA on notice that it must reform itself or have reform imposed by the Congress. The BIA has legitimate functions in the areas of technical assistance and protection of trust assets. The lack of proper management has rendered it incapable of performing these functions. Neither the tribal nor the Federal governments can continue to afford to bear the cost of an agency that tries to be everything to everyone and is failing miserably in its primary mission.

As the incoming Chairman for the Senate Committee on Indian Affairs, I am making my first and foremost objective a critical examination of the programs of the Bureau of Indian Affairs. I have called upon the Government Accounting Office to conduct a top to bottom review of the Bureau of Indian Affairs to determine exactly what it is doing, how it is doing it and how the BIA or other Federal agencies can do it better. I am also planning a series of oversight hearings focusing on the performance of the Bureau of Indian Affairs in a number of areas including the implementation of the Indian Self-Determination Act, Tribal Self-Governance and the 1994 Amendments to both Acts. I will be seeking the views of Indian country on how the Bureau of Indian Affairs can be improved and how we should reorganize the BIA to best serve American Indian people.

Indian tribes have long suffered under the paternalism of Federal bureaucrats. The Bureau of Indian Affairs now ranks as one of the worst Federal agencies in government. Each day we see new reports of waste, fraud, and gross mismanagement of Federal Indian programs.

The BIA financial system is a disaster: Over \$2.1 billion in revenues derived from Indian natural resources and placed "in trust" by the Federal government over the last fifty years for Indian people cannot be accurately reconciled. It is estimated that it will cost over \$390 million just to reconcile these accounts. In addition, government auditors of BIA financial records have been unable to properly account for over \$3.2 billion in BIA assets.

The BIA facilities management system needs a complete overhaul: The Inspector General reports that many BIA schools are in a state of disrepair and are poorly maintained. There are Indian children across this Nation who are today sitting in classrooms in schools that have been "condemned". There are Indian children who are living in BIA dormitories that are classified by the Inspector General as "uninhabitable". These reports are replete with examples of BIA schools with leaking roofs and ceilings, cracked and crumbling walls, and inoperative emergency lighting and equipment.

It has been over seven years since the Congress passed the Indian Self-Determination Act Amendments of 1988 and yet we still have no regulations.

It has been four years since the passage of the Indian Child

Protection and Family Violence Prevention Act. The BIA has not requested the funding necessary to implement the law. This indifference is unconscionable and it must stop.

One-half of Indian children under the age of six living on reservations are living in poverty. There are over 90,000 Indian families who are homeless or living in substandard housing. American Indians still suffer the highest mortality rates for any group in the Nation due to alcoholism, tuberculosis, diabetes, pneumonia and influenza.

The bureaucracy which has been established to deal with these problems is a failure by any measure.

This is not news to Indian people and it is not news to me.

In my twelve years in Congress, I have heard many of these grim statistics and I have seen many efforts to reform the Bureau of Indian Affairs. It is not new or novel to suggest that the BIA needs to be reformed. From the first reorganization efforts in 1834 through the 1929 Meriam report to the recommendations of the BIA-Tribal Joint Reorganization Task Force this year, there has been wave upon wave of efforts to reorganize the BIA. What is clear, is that despite the advancements in Federal Indian Policy from the Indian Self-Determination Act to the Tribal Self-Governance Act, little has changed in the Bureau of Indian Affairs.

To those who have repeatedly frustrated efforts to reform the BIA, let me be clear--we mean business. We will use all of the resources at our disposal to bring about real reform.



# *Campo Band of Mission Indians*

---

Ralph Goff  
Chairman

Barbara Cuero  
Vice-Chairman

Jackie Lelafu  
Secretary

Harry P. Cuero, Jr.  
Treasurer

COMMITTEE.

Brian Connolly  
Jane Dyche  
Michael Connolly

**TESTIMONY OF RALPH GOFF, CHAIRMAN  
CAMPO BAND OF MISSION INDIANS  
ON S. 814, THE BUREAU OF INDIAN AFFAIRS REORGANIZATION ACT OF 1995  
BEFORE THE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
JUNE 28, 1995**

My name is Ralph Goff and I am the Chairman of the Campo Band of Mission Indians, a band of Kumeyaay Indians located in eastern San Diego County, California. The Campo Band applauds Congress's and the Administration's efforts to streamline and reorganize the Bureau of Indian Affairs ("BIA"). However, we believe that this bill requires changes to achieve what is intended. I will discuss three general issues before addressing specific sections of the bill.

## **I. General Issues**

### **A. Time Frames**

Title III mandates reform of the BIA regulations and abolishment of the BIA Manual. Under Section 301, the Secretary of the Interior is required to review all provisions of the BIA Manual and promulgate as proposed regulations within 180 days after enactment of the legislation those parts of the Manual that are deemed necessary for implementation of the federal functions retained under the Compacts authorized by the Act. Section 302 requires that a task force be

appointed to review all regulations contained in Title 25 of the Code of Federal Regulations and submit a report to Congress containing recommendations for revisions to Title 25. This report must be submitted within 270 days of the bill's enactment. These provisions raise both general and technical concerns.

First, we question the need for doing away with the BIA Manual. The Manual can serve as useful guidance for both BIA and tribal employees. In our experience, the problem with the Manual is not its existence. The problem is that the Manual is not available to tribes or, indeed, to many BIA offices. If we all had copies of the Manual, the BIA could not invoke or ignore the Manual arbitrarily. Instead, both tribes and federal officials could know the procedures to be followed.

Second and more generally, the time frames provided in the bill could make for uninformed rule-making. Presumably, the task force recommendations will reflect the Plans and Compacts developed under the Act. However, the time lines provided do not allow for adequate consideration of those Plans and Compacts. Under the provisions for development of Area, Agency, and Central Office Plans, the mandated negotiations include discussions related to proposed "promulgation of revised regulations relating to the functions of the . . . [offices] that are to be performed by the [office] or transferred to the Indian tribes." Obviously, the Plans and Compacts developed pursuant to the Plans should be considered by the Secretary and the task force during their reviews of the BIA Manual and the regulations; however, there is no provision in Title I that would assure submittal of Plans and/or Compacts before the deadlines established for amending the regulations. Sections 101, 102, and 103 require the Secretary to "enter into negotiations" with the tribes for development of Plans for the reorganization of Area Offices, Agency Offices, and the Central Office. After approval of the Plans, the Secretary must, within

60 days, must enter into Compacts with the various tribes to implement the Plans. The 120-day and 60-day periods in Title I do not provide adequate time for development of the Plans, tribal approval of the Plans, and approval and execution of Compacts. It is easy to imagine that the time required for development of Plans and the necessary approvals could far exceed the time allocated for the reviews of the BIA Manual and Title 25. These reviews cannot and should not be completed without consideration of final Plans and Compacts.

#### **B. Inequities in Negotiations**

As we all know, the size of the various tribes and their available resources vary considerably. I represent a tribe consisting of about 300 enrolled members, while other tribes' memberships number over one hundred thousand. The Campo Band is concerned that the provisions related to allocation of tribal shares of funding could result in disproportionate allocations to larger tribes and to those tribes with substantial resources and expertise in negotiations. Proposed Plans for Agency and Area reorganization are to include formulas for the transfer of funds to the tribes. These formulas are to be based on negotiations with the tribes. It is conceivable that the results of the negotiations would be formulas more beneficial to some tribes than others. Where the majority of tribes fail to approve proposed Plans, implementation of S. 814 possibly could even result in increased costs because of provisions that allow tribes the option of taking their tribal share based on independent negotiations with the Secretary. Larger tribes with greater resources and expertise would be more likely to take advantage of this option. If the majority of tribes wish to maintain the status quo, allowing tribes to negotiate separately the allocation of their share will not decrease, and possibly will increase, the need for funds within an Area.

### **C. Concurrent Development of Plans**

There is a problem with the concurrent development of the Agency, Area, and Central Office Plans. Because §§ 101, 102, and 103 each require the commencement of negotiations within 120 days, concurrent development of Plans is mandated. We believe that development of Area Plans should be contingent on approval of Agency Plans, and the Central Office Plan should be contingent on approval of the Area Plans. Without an understanding of what the tribes want on the Agency level, how can Plans for reorganization on the higher levels proceed? We would suggest development of a more reasonable time line that would call for sequential development of Plans and approval of Compacts.

## **II. Analysis of Specific Sections**

### **A. Title I--Reorganization Compacts**

1. Sections 101(b)(1) and 102(b)(1) both seem to contain an incorrect reference: "To the extent that the majority of Indian tribes served by the area office do not exercise the option to maintain current organizational structures, functions, or funding priorities pursuant to paragraph (2), the reorganization plan shall provide . . . ." We believe that this phrase should refer to Paragraph (3). Paragraph (2) discusses the tribal share of funding; Paragraph (3) discusses the tribes' option to maintain current organizational structures, functions, or funding priorities.

2. Under Sections 101(b)(1), 102(b)(1), and 103(b)(2), the reorganization Plans are to include Plans for the promulgation of revised regulations relating to the functions that are to be performed by the BIA office or transferred to the tribe. Because of the requirement for individual and independent Agency and Area Compacts, and because of the number of Agency and Area Offices, the Plans to be developed may require duplicative and/or conflicting

regulations. Based on the requirements that the Secretary is to promulgate proposed regulations within 180 days and the task force is to prepare a report on proposed promulgations within 270 days after adoption of the Act, the requirement to include proposed regulatory changes in the Plans seems problematic in that, if the Secretary and the task force meet the statutory deadlines, the Plans will be finished only after the regulations have been revised.

2. Sections 101(b) and 102(b) are vague in relation to tribes that do not agree with the majority. Paragraph (b)(4) of both sections states that, after the majority of tribes approve a reorganization Plan, the Secretary shall enter into reorganization Compacts pursuant to Subsection (c). However, neither Subsection (b) or (c) specify which tribes must be parties to Compacts. Subsection (c) states that the Secretary cannot implement a reorganization Plan until "the Indian tribes have entered into a reorganization compact" and "if the Indian tribes fail to enter into [the compact], the organizational structure, functions, and funding priorities of the office in effect at the time of the development of the Plan shall remain in effect." In contrast, § 103(c)(1) states that the Secretary may not implement a central office reorganization Plan relating to an area until such time as the majority of tribes in that area have entered into a central office reorganization Compact. Which tribes must enter into Compacts to authorize implementation of a Plan? Must all tribes served by an office execute Compacts, or only those that approved the Plan, or only a majority of tribes? If Compacts must be executed by all tribes served by an office, and some tribes refused to approve of the proposed reorganization Plan, the odds of those tribes executing Compacts to implement the Plan are slim to none. As currently drafted, it can be argued that a single tribe could prevent implementation of a negotiated area or agency Plan agreed to by the majority.

3. The provisions for approval of agency and area Plans requires each tribe to adopt a resolution pursuant to the applicable procedures established by the tribe. See §§ 101(b)(4), 102(b)(4). However, no procedure is required for approval of a Plan if the office serves a single tribe, §§ 101(b)(5) and (c) and 102(b)(5) and (c). Under § 103, there is no requirement for approval of central office reorganization Plans by the affected tribes. We believe that the bill specifically should require tribal approvals of all reorganization Plans.

4. In discussing the option of a tribe to take its tribal share where tribes in its Area fail to approve a reorganization Plan, both §§ 101(b)(6)(C) and 102(b)(6)(C) require the Secretary and the tribe to enter into an agreement for transferring directly an amount equal to the tribal share. The agreement must include a determination of the amount of "residual Federal funds to be retained by the Secretary" for the office. The term "residual Federal funds" is not explained adequately or defined. Obviously, we are concerned that a single tribe could be awarded a disproportionate share or otherwise effectively deprive the remaining tribes of needed services.

5. Sections 101(c) and 102(c) state that, if "the tribes" fail to execute Compacts, the organizational structure, functions, and funding priorities of the office in effect at the time of the development of the Plan will remain in effect. Section 103(c) states that "if a majority of the Indian tribes in an area do not enter into a central office reorganization Compact," the organizational structure, functions, and funding priorities of the office in effect at the time of the development of the Plan will remain in effect. The provisions related to area and agency Plans imply that all tribes served by an office must approve a Compact before Plans can be implemented, regardless of whether they approved of the Plan. Tribes will be reluctant to invest their time in a process that can be defeated by only one other tribe. Under the provisions for central office reorganization, only a majority of tribes need to enter into Compacts. This seems

to mean that other non-compacting tribes are equally bound by the Compact's terms, either by law or as a practical matter.

**B. Title II--Amendment to the Indian Self-Determination Act**

1. Title II also has time line problems when viewed in conjunction with the processes for development of reorganization Plans and Compacts. Under § 201, new Title V of the Indian Self-Determination Act will require the Secretaries of the Departments of Interior and Health and Human Services to establish programs that will outline development of budgets for the BIA and IHS and will ensure the participation by each tribe in the development of the budget requests; these programs must be established within 120 days of enactment of the proposed legislation. This requirement does not allow for consideration of reorganization Plans or Compacts. The development of a program to include tribes in development of budget requests should reflect the negotiations on reorganization Plans.

2. There also may be problems related to timing when the provisions of Title II are viewed in conjunction with the provisions of Title III. Title III requires the Secretary of the Department of Interior to review the BIA Manual, which conceivably contains guidance on the budget process, promulgate those parts of the Manual that are necessary for the effective implementation of federal functions retained by the BIA under reorganization Compacts, and revoke the provisions of the Manual that are not promulgated within 180 days of enactment of the legislation. Additionally, Title III establishes a task force to review Title 25 of the Code of Federal Regulations with the purpose of recommending amendments; this review can take up to 270 days. These tasks should be coordinated with the development of new programs related to budget planning; changes in the BIA regulations obviously will impact the budget process.

**C. Title III--Reform of the Regulations of the  
Bureau of Indian Affairs**

1. In general § 301 requires the Secretary to review the BIA Manual, retain necessary provisions for the implementation of federal functions under reorganization Compacts, and revoke all provisions of the BIA Manual not promulgated as regulations. This, coupled with § 302(g) prohibiting imposition of non-regulatory requirements on tribes, seems to be intended to prevent the BIA from establishing guidance documents for implementation of programs. The problem with the BIA Manual is not its existence, but its non-availability to tribes. Requiring all restrictions or standards be promulgated as regulations would impose debilitating strictures on Bureau of Indian Affairs activities. Routine changes or variances to standards would not be able to be made as needed, since formal rule-making procedures would be required.

2. Section 301 assumes that tribes will agree with reorganization Plans and enter into Compacts. As explained above, this may not occur. If the Secretary is required to promulgate new regulations based on functions that will be retained under the Compacts, the review should not be undertaken until Compacts are finalized. The Secretary is only required to begin negotiations within 120 days of enactment of the legislation and Compacts must be executed within 60 days of approval of Plans. The legislation is silent as to the time allocated for negotiations. If the majority of tribes fail to agree to reorganization, the promulgation of regulations under this provision will not necessarily reflect the reorganization Plans and Compacts.

3. Section 302 requires establishment of a task force whose duty is to review Title 25 of the Code of Federal Regulations and report to the Congress on its recommendations for amendments; the report must be submitted no later than 270 days after enactment of the legislation. Again, in light of the concurrent development of reorganization Plans and Compacts, this time frame seems restrictive. There is no requirement in the proposed legislation that would



guarantee that the task force would be able to consider components of negotiated Plans and Compacts in its review of the regulations. If the majority of tribes agree to Plans and Compacts, the federal regulations relating to Indian affairs will change. We would suggest that the task force not be established until the procedures in Title I are completed.

4. Section 302(g) prohibits the Department of the Interior from promulgating any unpublished regulation or agency guidance and from imposing any non-regulatory requirement that affects Indian tribes. This provision seems to prohibit the BIA from using guidance documents that have not been promulgated as regulations. All federal agencies rely on internal, non-regulatory guidance documents to implement their programs. As stated above, the problem with the BIA's use of guidance documents is that they are not generally available to the tribes for review. We believe that prohibiting the BIA's use of non-regulatory guidance documents could result in inflexibility in administration of programs or functions retained under Compacts.

5. Section 302(g) addresses the use of non-regulatory guidance that "affects tribes." Does the prohibition include requirements relating to individual Indians such as guidance on Individual Indian Money Accounts or leasing of lands held in trust for individuals?

### **III. Conclusion**

As stated in my introduction, the Campo Band welcomes your efforts to streamline and reorganize the Bureau of Indian Affairs in a manner that will enhance tribal sovereignty and allow for equitable delegation of functions and resources. S. 814 is a good start. The Campo Band believes that the proposed legislation needs to be clarified and inconsistencies eliminated. As drafted, the legislation does not offer tribes compelling incentives to negotiate reorganization Plans or execute Compacts. When all is said and done, implementation of BIA reorganization under the legislation could rest in the hands of a minority of tribes.

Additionally, if development of reorganization Compacts is to succeed, attempts to modify, amend, or eliminate regulations should not be required to occur concurrently with the development of such Plans and Compacts. Because Plans are to include recommendations for regulatory changes, it would be advisable to allow consideration of these Plans in any future attempts to review and change Title 25. As drafted, reviews and amendments of the regulations are mandated to occur during the time tribes are negotiating with the Bureau on reorganization; we believe that this is inappropriate.

Thank you for this opportunity to express my views and the views of the Campo Band of Mission Indians. We are interested in being involved at all levels of Bureau of Indian Affairs reorganization in the future.



Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7000

June 26, 1995

TO : Senate Indian Affairs Committee  
Attention: Steven J.W. Heeley

FROM : Roger Walke  
Analyst in American Indian Policy  
Government Division *RW*

SUBJECT : Bureau of Indian Affairs Reorganization: Side-by-Side  
Comparison of Joint Task Force Recommendations and  
S. 814 (104th Congress)

This memorandum responds to your request for a side-by-side comparison of:

- the recommendations of the Joint Tribal/BIA/DOI Task Force on Bureau of Indian Affairs Reorganization from the Joint Task Force's final report;<sup>1</sup> and
- the Bureau of Indian Affairs Reorganization Act of 1995, S. 814 (104th Congress), introduced May 17, 1995.

The side-by-side comparison is presented in Table 1 below. In column one the table quotes all of the Joint Task Force (JTF) recommendations; in column two it summarizes those provisions of S. 814 that address a particular recommendation.

The JTF made 44 recommendations in four areas: organization reform, regulatory reform, education reform, and budget reform. (Two recommendations were repeated under different reform sections.) Some JTF recommendations were general and some were quite specific. S. 814 does not address all of the JTF recommendations, and particularly does not make provisions for the education reform recommendations.

Please call me at 707-8641 if you have any questions regarding this request

---

<sup>1</sup> *Report of the Joint Tribal/BIA/DOI Advisory Task Force on Reorganization of the Bureau of Indian Affairs to the Secretary of the Interior and the Appropriations Committees of the United States Congress* August 1994 [Washington, D.C. 1994]

Table 1. Side-by-Side Comparison of Recommendations by the Joint Tribal/BIA/DOI Task Force on BIA Reorganization with the Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
<b>1. Organization Reforms</b>	
1. Continue Tribal consultation process and Tribal participation on all reorganizations of the Bureau of Indian Affairs	<p>Title I directs the Secretary of the Interior (Secretary) to negotiate compacts with Indian tribes to reorganize the BIA at the area, agency, and central office levels.</p> <p>Title II, § 201, "Sec. 502," requires the Secretary to cooperate with tribes, and ensure maximal tribal participation, in promulgating standard assessment methodologies for determinations of budget needs.</p> <p>Title III directs the Secretary to (1) review the BIA Manual, with minimal tribal participation, and (2) establish a regulatory reform task force that shall include tribal representatives from each of the 12 BIA areas.</p>
2. Redefine BIA as a "three-tiered" organization.	Title I provides for the reorganization of the BIA at three levels: agency, area, and central office.
3. Decentralize authority to the Tribe/Agency level.	Title I, §§ 101-103, direct the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the area, agency, and central office levels, including the specification of functions transferred to the tribes (§§ 101(b)(1)(E)(ii), 102(b)(1)(E)(ii), 103(b)(2)(E)(ii)).
4. Redistribute resources as a result of Central Office decentralization and/or streamlining to the Tribe/Agency level.	Title I, §§ 103(b)(1)(A)(iii) and 103(b)(2)(d), requires that the central office reorganization plan provide that the Secretary determine excess funds for allocation to tribes in each area based on a formula.
5. Redefine role of and reduce Central Office operations	Title I, § 103, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the central office level, including delegation of authority and reallocation of personnel and funds.
6. Continue restructuring Area Offices using the "Designer Area" concept with Tribes empowered to design their respective Areas and Agencies	Title I, § 101, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the area office level.
7. Approve plans developed by Tribes for redesigning Area Offices including Navajo Nation's NPR Laboratory	Title I, § 101(b)(5), directs the Secretary to negotiate a compact with the appropriate tribe to reorganize the tribe's area office.

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
8. Consolidate administrative support functions into two administrative support centers to serve Education and the balance of the Bureau with the understanding that there will be some shared services.	No corresponding provision.
9. Establish an Associate Commissioner structure for Central Office West organizations outside Washington, D.C., reporting to a single position.	No corresponding provision.
10. Move Facilities Construction management to the Office of Indian Education [Program] [OIEP].	No corresponding provision.
11. Move Congressional and Legislative Affairs Staff and Public Information Staff organizations to Office of the Assistant Secretary. Combine and add Inter-governmental Relations function to create new staff organization.	No corresponding provision.
12. Require continued oversight by Tribal Governments to ensure implementation of Task Force Recommendations.	No corresponding provision.

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as Introduced May 17, 1995)
<b>II. Regulatory Reforms</b>	
1. Implement a new process for rule-making and directives management for the BIA.	<i>No corresponding provision.</i>
2. Establish a Regulatory Reform Team reporting to the Assistant Secretary—Indian Affairs to implement regulatory reform.	Title III, § 302 directs the Secretary to establish a regulatory reform task force, with tribal representatives from each of the 12 BIA areas, to review title 25 of the Code of Federal Regulations, make recommendations for revisions, and report to the Secretary, Congress, and each tribe.
3. Establish a number of technical groups under the guidance of the Regulatory Reform Team to review and revise specific sections of the CFR [Code of Federal Regulations] and BIA M [BIA Manual].	Title III directs the Secretary to (1) review the BIA Manual and (2) establish a related regulatory reform task force with tribal representatives from each of the 12 BIA areas, and requires maximal tribal participation in BIA M review (§ 301(b)) and allows the task force to procure temporary services (§ 302(d)(3)(B)).
4. Engage a consultant or consultants to work with the Regulatory Reform Team and the technical groups.	Title III directs the Secretary to establish a regulatory reform task force and allows the task force to procure temporary services (§ 302(d)(3)(B)).
5. Change existing procedure for reviewing and publishing directives.	<i>No corresponding provision.</i>
6. Create directives storage and retrieval system using CD-ROM technology.	<i>No corresponding provision.</i>
7. Revise currently out-of-date directives distribution list.	<i>No corresponding provision.</i>
8. Publish the delegations of authority required to transfer authority from the Deputy Commissioner of Indian Affairs and the Director, Office of Indian Education Programs (.) to the Agency Superintendents and Education Line Officers, including the authority to approve P.L. 93-638 contracts.	Title I, § 102, directs the Secretary to negotiate compacts with the appropriate Indian tribes to reorganize the BIA at the agency level, including the delegation of authority to the agency superintendent (§ 102(b)(1)(C)).

## CRS-6

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
<b>III. Education Reforms</b>	
1. Fully implement P.L. 95-561, as amended.	<i>No corresponding provision.</i>
2. Operate the Central Office and Education Line Office structure of the Office of Indian Education Programs (OIEP) in a combined, coordinated manner in support of Tribes and schools, with authorities decentralized to the Tribe/school level.	<i>No corresponding provision.</i>
3. Consolidate administrative support functions into two Administrative Support Centers to serve Education and the balance of the Bureau with the understanding that some services will be shared. <i>Same as Organization Reform recommendation #8.</i>	<i>No corresponding provision.</i>
4. Move the Facilities Management and Construction Center (FMCC) to OIEP. <i>Same as Organization Reform recommendation #10.</i>	<i>No corresponding provision.</i>
5. Authorize and implement on-site encoding of obligations directly into the Federal Finance System (FFS) at OIEP Education Line Offices and larger schools including post-secondary institutions.	<i>No corresponding provision.</i>

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
<b>IV. Budget Reforms</b>	
1. Adopt formal policy to implement Planning and Evaluation systems.	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretaries of the Interior and Health and Human Services (HHS) to establish programs of tribal participation in BIA and Indian Health Service (IHS) budget requests, including information collection for planning and evaluation ("Subsections 501(c)(1)(C), 501(c)(2)(A), 501(c)(2)(D), 501(c)(3)").
2. Adopt formal policy for BIA-wide information management systems [IMS].	Title II, § 201, "Sec. 501," requires that the tribal budget participation programs to be established by the Interior and HHS Secretaries should include information collection for planning and evaluation ("Secs. 501(c)(1)(C), 501(c)(3)").
3. Adopt Planning and Evaluation component as a re-engineering laboratory	<i>No corresponding provision.</i>
4. Obtain professional critique of ICWA [Indian Child Welfare Act] pilot model Standard Assessment Measure.	<i>No corresponding provision.</i>
5. Develop Standard Assessment Measure [SAM] of each BIA program as directed by Congress.	Title II, § 201, "Sec. 502," requires the Secretary to cooperate with tribes, ensure maximal tribal participation, and use negotiated rulemaking, in promulgating standard assessment methodologies for determinations of budget needs for each program area.
6. Continue refinement of Bureau accounting and budgeting support systems to support full implementation of TBS [Tribal Budget System].	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Interior and HHS Secretaries to establish programs of tribal participation in BIA and IHS budget requests.
7. Continue and improve the Annual National Budget Hearings.	<i>No corresponding provision.</i>
8. BIA utilize Congressionally approved process to implement movement of Housing Improvement, Johnson-O'Malley and Roads Maintenance to TPA [Tribal Priority Allocations].	<i>No corresponding provision.</i> <i>Note: Housing Improvement, Johnson-O'Malley and Roads Maintenance were transferred to TPA in the BIA's FY 1995 budget.</i>
9. BIA consult with Tribes during FY 1995 and move Welfare Assistance and Contract Support and Facilities O&M [Operation and Maintenance] to TPA in FY 1996.	<i>No corresponding provision.</i> <i>Note: The President's proposed budget BIA budget for FY 1996 transfers Welfare Assistance and Contract Support into TPA.</i>



Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as Introduced May 17, 1995)
10. Consider options of a TPA account for Education.	<i>No corresponding provision.</i>
11. BIA review all other recurring and non-recurring programs and, if appropriate, move to TPA.	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretary to establish a program of tribal participation in BIA budget requests, and requires that this budget program provide for tribal priority-setting and flexibility in Federal and tribal program design.
12. Assistant Secretary mandate BIA carry out movement of programs to TPA	Title II, § 201, amends the Indian Self-Determination Act by adding a new "Sec. 501" that directs the Secretary to establish a program of tribal participation in BIA budget requests, and requires that this budget program provide for tribal priority-setting and flexibility in Federal and tribal program design.
13. BIA update analysis of base funding each year until all Small Tribes have at least the minimum base funding.	Title II, § 201, "Sec. 501" and "Sec. 503," which directs the Secretary to establish a program of tribal participation in BIA budget requests, requires the Secretary to support stable recurring base funding for each tribe ("Sec. 501(c)(2)" and requires annual reports to Congress ("Sec. 503").
14. Set aside not less than 20% of general TPA increases and 1/14 of streamlining savings for Small Tribes minimum base funding.	Title I, § 109, suspends the implementation of any BIA changes associated with reinventing government, national performance review, or other downsizing initiatives (such as streamlining) for two years.
15. BIA not to count Contract Support and Other Recurring Programs against minimum TPA base for Small Tribes	<i>No corresponding provision.</i>
16. BIA implement a formal policy for administration of Contract Support funds.	<i>No corresponding provision.</i>
17. BIA to provide an analysis of full Contract Support requirements.	<i>No corresponding provision.</i>
18. Track and report streamlining savings and their application within the annual budget submission to Congress.	<i>No corresponding provision.</i>
19. Secretary direct BIA to establish Planning and Change System organization.	<i>No corresponding provision.</i>

CRS-9

Table 1. Side-by-Side Comparison of Joint Task Force Recommendations with S. 814 (104th Congress — Continued)

Joint Task Force (JTF) Recommendations	Bureau of Indian Affairs Reorganization Act of 1995 (S. 814, 104th Congress, as introduced May 17, 1995)
20. BIA recommend at least two-year availability for all appropriated funds.	No corresponding provision.
21. Congress enact new Title to Self-Determination Act to implement TBS principles in law.	Title II amends the Indian Self-Determination Act, as amended by the Tribal Self-Governance Act of 1994, by adding a new "Title V" to (1) direct the Secretary to establish a program of tribal participation in BIA budget requests; and (2) direct the Secretary of HHS to establish a similar program for the IHS.

93-888 (152)

ISBN 0-16-052048-7





